

ORANGE COUNTY PLANNING DEPARTMENT  
131 W. MARGARET LANE, SUITE 201  
HILLSBOROUGH, NORTH CAROLINA 27278



**AGENDA**  
**ORANGE COUNTY PLANNING BOARD**

**ORANGE COUNTY WEST CAMPUS OFFICE BUILDING**  
**131 WEST MARGARET LANE – LOWER LEVEL CONFERENCE ROOM (ROOM #004)**  
**HILLSBOROUGH, NORTH CAROLINA 27278**  
**Wednesday, July 1, 2015**  
**Ordinance Review Committee Meeting – 6:00 pm**

**Note:** This is a meeting of the Ordinance Review Committee (ORC) for Planning Board members who would like to review and comment on proposed amendments before the items are placed on a Quarterly Public Hearing agenda. Attendance is not mandatory and a quorum is not necessary for meetings of the ORC.

<u>No.</u>	<u>Page(s)</u>	<u>Agenda Item</u>
1.		<b>CALL TO ORDER</b>
2.	2 - 16	<b>UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – RECREATIONAL FACILITIES</b>  To review and comment upon proposed amendments to the UDO to modify the existing regulations pertaining to recreational facilities.  <b>Presenter:</b> Michael Harvey, Current Planning Supervisor
3.	17- 74	<b>UNIFIED DEVELOPMENT ORDINANCE (UDO) TEXT AMENDMENTS – PUBLIC HEARING PROCESS REVISIONS</b>  To review and comment upon proposed amendments to the UDO to revise the public hearing process.  <b>Presenter:</b> Perdita Holtz, Planning Systems Coordinator
4.		<b>ADJOURNMENT</b>

**ORANGE COUNTY  
PLANNING BOARD ORDINANCE REVIEW COMMITTEE  
ACTION AGENDA ITEM ABSTRACT**  
Meeting Date: July 1, 2015

**Action Agenda  
Item No.   G**

**SUBJECT:** Unified Development Ordinance (UDO) Text Amendment – Recreational Uses

**DEPARTMENT:** Planning and Inspections

**PUBLIC HEARING: (Y/N)**

No

**ATTACHMENT(S):**

**INFORMATION CONTACT:**

- |  |  |
|--|--|
| 1. Comprehensive Plan and Unified Development Ordinance Outline Form (UDO & Zoning 2015-4) | Michael D. Harvey, Planner III (919) 245-2597<br>Craig Benedict, Director (919) 245-2575 |
| 2. Draft UDO Text Amendment  |  |

**PURPOSE:** To review and comment upon Planning Director initiated Unified Development Ordinance (UDO) text amendments modifying existing regulations governing the development and use of recreational land uses.

**BACKGROUND:** Please see Section B of Attachment 1 for relevant information.

The “Amendment Outline Form” (Attachment 1) for these amendments was approved by the BOCC at its May 5, 2015 regular meeting. As is the typical process, ORC reviews and comments on the proposed County initiated amendments in advance of the presentation of the amendment at a Quarterly Public Hearing.

**FINANCIAL IMPACT:** Please refer to Section C.3 of Attachment 1.

**RECOMMENDATION(S):** The Planning Director recommends the ORC review and comment on the proposed amendment package.

# COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2015-04

Revision(s) of existing definitions and regulations governing the development of recreational facilities within the County.

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## A. AMENDMENT TYPE

**Map Amendments**

- Comprehensive Plan – Future Land Use Element Map:  
From: - - -  
To: - - -
- Zoning Map:  
From: - - -  
To: - - -
- Other:

**Text Amendments**

- Comprehensive Plan Text:  
Section(s):

- UDO Text:
  - UDO General Text Changes
  - UDO Development Standards
  - UDO Development Approval Processes

Section(s): Section(s):

1. 5.2.1 *Table of Permitted Uses – General Use Zoning Districts;*
2. 5.2.2 *Table of Permitted Uses – Economic Development Districts;*
3. 5.2.3 *Table of Permitted Uses – Conditional Use Districts;*
4. 5.7 *Standards for Recreational Uses, and*
5. *Article 10 Definitions.*

- Other:

## B. RATIONALE

### 1. Purpose/Mission

In accordance with the provisions of Section 2.8 *Zoning Atlas and Unified Development Ordinance Amendments* of the UDO, the Planning Director has initiated a text amendment to revise existing regulations and definitions of recreational uses.

While reviewing an issue with the Attorney's office it was determined the County's existing definitions and classification methodology for recreation uses (i.e. relying on the profit/non-profit status of said operation) was not appropriate and inconsistent with acceptable legal practice. The regulation and permitting of recreational uses should be based anticipated impacts of said use rather than on its 'tax status'.

### 2. Analysis

As required under Section 2.8.5 of the UDO, the Planning Director is required to: *'cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners'*.

Recreational uses are defined as follows within the UDO:

- *Recreation Use, Non-Profit:* An indoor or outdoor recreation use owned by a not-for-profit corporation, according to the laws of North Carolina.
- *Recreation Use, Profit:* An indoor or outdoor recreation use owned by an entity other than a not-for-profit corporation.

Recreation Use, Non-profit land uses are allowed, through the issuance of a Class B Special Use Permit (i.e. reviewed and acted upon by the Board of Adjustment) in:

1. All residential zoning (i.e. Rural Buffer (RB), Agricultural Residential (AR), Rural Residential (R-1), Low (R-2), Medium Residential (R-3, R-4), and High Intensity(R-5, R-8, and R-13) districts.
2. Commercial zoning (i.e. Local Commercial (LC-1), Neighborhood Commercial (NC-2), Community Commercial (CC-3), General Commercial (GC-4), and Office Institutional (OI)) districts.
3. All industrial (i.e. Light Industrial (I-1), Medium Industrial (I-2), Heavy Industrial (I-3)) districts.
4. Within a Master Planned Development Conditional Zoning (MPD-CZ) district.

Recreation Use, Profit is allowed within the Community Commercial (CC-3), General Commercial (GC-4), and Light Industrial (I-1) zoning districts as a permitted use (i.e. administrative review and approval by staff).

Within the Buckhorn and Eno Economic Development districts both Recreation Use, Profit and Non-profit land uses are only allowed within both the Low and High Intensity general use zoning designations with the review and approval of a Conditional Use (i.e. rezoning and Class A Special Use Permit) application by the BOCC. There are specific recreational land uses, including a golf driving range,

listed as a permitted use of property within these districts.

Staff has been working to address local resident concern(s) over the purported development of commercial shooting ranges. Currently the County has no land use standards governing the development of such uses (i.e. setbacks, development of protective berms to absorb bullets, etc.).

Staff is proposing to overhaul our current regulations by:

- a. Establishing new definitions for recreational uses;
- b. Reviewing the types of recreational land uses permitted in each zoning district and suggesting revisions;
- c. Developing new standards governing the development of recreational land uses; and
- d. Developing standards governing the discharge of firearms from both a commercial business and personal enjoyment standpoint.

The amendments are necessary to address outdated regulations governing the development of recreational land uses, update existing development standards and requirements, complete a review of acceptable recreational land uses throughout the County, and establish land use regulations governing the discharge of firearms.

Nothing within the proposed amendments will impact the development of parks/recreational amenities by Orange County.

Additional analysis will be part of the public hearing materials.

**3. Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)**

**Land Use Goal 2:** Land uses that are appropriate to on-site environmental conditions and features and that protect natural resources, cultural resources, and community character.

**Land Use Goal 4:** Land development regulations, guidelines, techniques and/or incentives that promote the integrated achievement of all Comprehensive Plan goals.

**4. New Statutes and Rules**

N/A

**C. PROCESS**

**1. TIMEFRAME/MILESTONES/DEADLINES**

- a. BOCC Authorization to Proceed
  - May 5, 2015
- b. Quarterly Public Hearing

September 8, 2015

c. BOCC Updates/Checkpoints

May 5, 2015 – Approval of UDO Amendment Outline Form  
July 1, 2015 – Planning Board Ordinance Review Committee (ORC) (BOCC receives materials)  
September 8, 2015 – Quarterly Public Hearing  
November 5, 2015 – Receive Planning Board Recommendation

d. Other

N/A

**2. PUBLIC INVOLVEMENT PROGRAM**

**Mission/Scope:** Public Hearing process consistent with NC State Statutes and Orange County ordinance requirements

a. Planning Board Review:

July 1, 2015 – Ordinance Review Committee  
October 7, 2015 – Recommendation

b. Advisory Boards:

Orange County Parks Advisory Board  
– DEAPR staff

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c. Local Government Review:

Staff will transmit copies of the proposed text amendments to our planning partners in the Towns of Chapel Hill, Carrboro, and Hillsborough for their review and comment in August of 2015.

The Orange County Sheriff’s office will also be asked to review and comment.

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d. Notice Requirements

Legal advertisement published in accordance with the provisions of the UDO.

e. Outreach:

General Public: Consistent with NC State General Statutes and Orange County Ordinance requirements.

Small Area Plan Workgroup: \_\_\_\_\_

Other: \_\_\_\_\_

### 3. **FISCAL IMPACT**

Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2015-16 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

## D. AMENDMENT IMPLICATIONS

The amendment will revise existing, outdated, regulations governing the categorization and development of recreational land uses.

## E. SPECIFIC AMENDMENT LANGUAGE

Will be available as part of the quarterly public hearing materials.

### **Primary Staff Contact:**

Michael D. Harvey

Planning

(919) 245-2597

mharvey@co.orange.nc.us

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																					
* = PERMITTED USE		A = CLASS A SPECIAL USE				B = CLASS B SPECIAL USE				Δ = SUBJECT TO SPECIAL STANDARDS											
USE TYPE	GENERAL USE ZONING DISTRICTS																				
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3	PID
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																					
Military Installations (National Guard & Reserve Armory) ~															*	*	*		*		
<b>MANUFACTURING, ASSEMBLY &amp; PROCESSING</b>																					
Assembly and Packaging Operations Including Mail Order Houses, But Excluding On-Premises Retail Outlets													*			*		*	*	*	
Industrial, Heavy ~																				*	
Industrial, Light ~																	*	*	*	*	
Industrial, Medium ~																			*	*	
Microbrewery, production only ^	B	B																*	*	*	
Printing & Lithography													*	*	*			*	*	*	
Sawmills ~																	*				
Winery, production only ^	B	B																*	*	*	
<b>MEDICAL USES</b>																					
Health Services: Over 10,000 Sq. Ft. ~													*								
Health Services: Under 10,000 Sq. Ft.										*		*	*	*	*						
Hospitals ~													*		*						
Veterinary Clinic		B								*	*	*	*	*	*	*		*	*	*	
Veterinary Clinic, mobile		B	B							*	*	*	*	*	*	*		*	*	*	
Veterinary Hospitals												*	*	*	*	*		*	*	*	
<b>RECREATIONAL USES</b>																					
Botanical Gardens & Arboretums	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Camp/Retreat Center	B	B	B																		
Golf Driving and Practice Ranges		B										*	*					*			
Parks, Public & Non-Profit	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*

Attachment 2

TABLE OF PERMITTED USES – GENERAL USE ZONING DISTRICTS																					
* = PERMITTED USE		A = CLASS A SPECIAL USE				B = CLASS B SPECIAL USE				Δ = SUBJECT TO SPECIAL STANDARDS											
USE TYPE	GENERAL USE ZONING DISTRICTS																				
	RB	AR	R1	R2	R3	R4	R5	R8	R13	LC1	NC2	CC3	GC4	EC5	OI	AS	EI	I1	I2	I3	PID
~ Use may not be permitted as a Conditional Use District; See Section 5.1.4(E) ^ Allowed as more than one principal use if located on a bona fide farm (see Section 6.2.5)																					
Recreational Facilities (Non-Profit) <sup>1</sup>	B	B	B	B	B	B	B	B	B	B	B	B	B*	B*		B			B*	B	B
Recreational Facilities (Profit)													B*	B*					B*		
Golf Course	A	A	A	A	A	A	A	A	A	A	A	A	A	A		A			A	A	A
RESIDENTIAL USES																					
Dwelling; Mobile Home	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*						
Dwelling; Multiple Family				*	*	*	*	*	*	*	*	*	*	*	*						
Dwelling; Single-Family	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*						
Dwelling; Two-Family	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*						
Family Care Home	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*					
Group Care Facility	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B						
Rehabilitative Care Facility										*		*	*								
Residential Hotel (Fraternities, Sororities, and Dormitories) ~								A	A	A			A	A							
Rooming House						*	*	*	*						*						
TELECOMMUNICATIONS																					
Telecommunication Tower – Stealth (75 feet or shorter)	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*	*
Telecommunication Towers (Over 75 feet and under 200 feet)	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B	B
Telecommunication Towers (200 feet and higher)	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

<sup>1</sup> Staff is eliminating the distinction between profit and non-profit recreation facilities. After reviewing the matter with the Attorney’s office staff has determined the ownership status of a recreational land use is not a reasonable means of establishing land use regulations. Whether or not a recreational facility is a for profit entity or not the impacts of said development on adjacent property owners will be the same. From this standpoint it makes more sense to establish reasonable land use controls instead of relying on the tax status of a property owner when determining the viability of a project or identifying required permit review processes (i.e. administrative review versus a requiring a special use permit).

TABLE OF PERMITTED USES – ECONOMIC DEVELOPMENT DISTRICTS									
* = PERMITTED USE    A = CLASS A SPECIAL USE    B = CLASS B SPECIAL USE    C = CONDITIONAL USE (REZONING & CLASS A SUP)									
USE TYPE	GENERAL USE ZONING DISTRICTS								
	BUCKHORN EDD		ENO EDD		HILLSBOROUGH EDD				
	EDB-1	EDB-2	EDE-1	EDE-2	EDH-1	EDH-2	EDH-3	EDH-4	EDH-5
# Shall be noted on Zoning Atlas as “Zoning District” – CU (e.g., EDB-2-CU)									
Golf driving and practice ranges		*		*					
Health Care & Social Assistance (Sector 62)					*	*	*	*	
Health services, including doctors and dentists offices, and medical and dental laboratories	*	*	*	*					
Hotels and motels	*	C#		*	*	*	*		
Indoor theaters	*	C#		*	*	*	*		
Large day care home		B	*	*					
Laundry, dry cleaning, and shoe repair services	*	C#	*	*					
Libraries	*	C#	*	*					
Management of Companies & Enterprises (Sector 53)					*	*	*	*	
Motor vehicle maintenance and repair (body shop)		C#		*					
Other offices and personal services; e.g., attorneys, watch and jewelry repair, computer programming and data processing, employment and travel agencies, advertising agencies, and accounting, engineering, architectural, and surveying offices	*	*	*	*					
Professional, Scientific & Technical Services (Sector 54)					*	*	*	*	
<del>Recreational facilities (Non-Profit)</del>	<del>C#</del>	<del>C#</del>	<del>C#</del>	<del>C#</del>					
Recreational facilities (Profit)	C#_B	C#_*	C#_B	C#_*					
Repair service, electronic and appliance	C#	C#	*	*					
Research facility		*		*					
Schools, dance, art, and music	*	C#	*	*					
Schools, elementary, middle, and high	A	A	*						
Schools, vocational	C#	C#		*					

TABLE OF PERMITTED USES – CONDITIONAL ZONING DISTRICTS				
* = PERMITTED USE				
USE TYPE	CONDITIONAL ZONING DISTRICTS			
	ASE-CZ	MPD-CZ	MHP-CZ	REDA-CZ-1
NOTE: Applications for Conditional Zoning Districts must list specific uses for consideration/approval ^: Use shall not be approved on parcels located in the Rural Buffer land use classification, as designated by the adopted Comprehensive Plan.				
Veterinary Hospitals	*	*		
<b>RECREATIONAL USES</b>				
Arts, Entertainment & Recreation (Sector 71)				
Botanical Gardens & Arboretums	*			
Camp/Retreat Center	*			
Golf Driving and Practice Ranges		*		
Guest Ranch	*			
Parks, Public & <del>Non-Profit</del>	*	*		
Recreational Facilities (Non-Profit)		*		
Recreational Facilities (Profit)		*		
Golf Course		*	*	
Race Track (Motorized, etc.) and Go-Kart Track Facilities				*
<b>RESIDENTIAL USES</b>				
Dwelling; Mobile Home	*		*	
Dwelling; Multiple Family		*		
Dwelling; Single-Family	*	*		
Dwelling; Two-Family		*		
Family Care Home				
Group Care Facility		*		
Rehabilitative Care Facility		*		
Residential Hotel (Fraternities, Sororities, and Dormitories)				
Rooming House				
<b>TELECOMMUNICATIONS</b>				
Telecommunication Tower – Stealth (75 feet or shorter)	*	*		
Telecommunication Towers (150 feet in height or shorter)	*	*		

from adjacent residentially zoned property.

- (4) The site shall be located on a major road, as classified in the Orange County Comprehensive Plan, unless permitted as an ASE-CZ.
- (5) Parking shall not be located in the front yard space.
- (6) Application materials shall include a comprehensive groundwater study, for facilities expected to use more groundwater on an annual basis than an average single family residence (which uses 240 gallons of water per day) built at the highest density the existing zoning district would allow. For example, if the existing zoning district allows a residential density of 1 unit for 2 acres and the proposed use is on a six acre parcel (which could yield 3 residences), the proposed use(s) may use three times the water used by an average single family residence (or 720 gallons per day, on an annualized basis) before a comprehensive groundwater study is required. The water usage rates of any existing use subject to zoning regulations located on the same lot shall be taken into account when determining if a comprehensive groundwater study is required. Said study shall detail:
  - (a) The amount of water anticipated to be used on a daily, weekly, monthly, and annual basis by regulated uses located on the parcel (e.g., water usage by bona fide farm uses is not required to be included);
  - (b) An analysis of the amount of groundwater withdrawal considered to be safe and sustainable in the immediate vicinity; and
  - (c) An analysis of whether other wells in the vicinity of the proposed use are expected to be affected by withdrawals made by the proposed use.

## SECTION 5.7: STANDARDS FOR RECREATIONAL USES

### 5.7.1 Recreational Uses for Residential Land Uses<sup>2</sup>

#### (A) General Standards

- (1) Recreational uses shall be treated as a customary accessory use to residential land uses and shall adhere to all applicable development standards for the district in which they are located unless otherwise specified herein.
- (2) Recreational uses shall not be open to the public, designed to accommodate public access or use, used in connection with established recreation leagues or organizations, or in any way serve as a recreation amenity for adjacent property owners.<sup>3</sup>
- (3) Amenities, equipment, and/or facilities such as athletic field lighting, bleachers, or public address systems shall not be permitted.<sup>4</sup>

#### (B) Specific Standards

<sup>2</sup> Staff has always interpreted a recreational use (i.e. pool, basketball court, etc.) to be an customary accessory use to a residence. There have been issues in the past with property owners allowing for the use of recreation amenities on their property to serve others. To address this issue staff is recommending the imposition of various standards to ensure this use does not become some form of commercial operation.

<sup>3</sup> Staff is not trying to say a property owner cannot have friends over who use a pool or basketball court. What we are attempting to avoid is the defacto expansion of an accessory use on 1 property to serve others recreation needs.

<sup>4</sup> Staff has received concerns from various property owners over the years with respect to a private land owners ability to erect amenities, primary athletic field lights, to expand the use of their accessory recreation use. Staff is recommending language that would prohibit the installation/use of equipment allowing for the expanded use of a recreation amenity beyond what is considered customary for a residential setting.

**(1) Shooting activities<sup>5</sup>**

- (a) Nothing within this section shall be construed as limiting or otherwise restricting hunting activities or the use of fireworks.
- (b) All shooting or targeting activities shall be oriented to keep discharged bullets, shot, and/or arrows on the property.
- (c) A projectile-proof backstop consisting of concrete, steel, earth or any combination thereof, a minimum 15 feet in height and 30 feet in width, shall be erected and maintained behind all target areas.
- (d) Shooting activities and required backstop shall be located a minimum of 300 feet from all property lines, rights-of-way, or access easements and 1,000 feet from occupied dwelling units external to the site.
- (e) Warning signs posted at one hundred-foot intervals along the perimeter of the property.
- (f) The equivalent of a Type B land use buffer shall be preserved and/or installed along the perimeter of the property where shooting activities occur.
- (g) The use of exploding shells, targets, or other similar materials shall be prohibited.

**(2) Motor cross and Go-Kart Tracks<sup>6</sup>**

- (a) All tracks and/or paths shall be located a minimum of 100 ft. from a property line. Under no circumstances may a track or path cross over active septic fields.
- (b) A Type B Land Use Buffer shall be maintained along the perimeter of the property in accordance with this Ordinance.

**5.7.45.7.2 Recreational Facilities**

**(A) General Standards of Evaluation**

- (1) The standards included herein shall be applied to ~~the following for profit~~ recreational facilities, including but not limited to:
  - (a) Tennis clubs,
  - (b) Swim clubs,
  - (c) Racquet ball,
  - (d) Squash clubs,
  - (e) Pitch and putt courses,
  - (f) Amusement areas,
  - (g) Bowling alleys,
  - (h) Skating rinks,
  - (i) Shooting ranges,
  - (j) Billiard and pool halls,

<sup>5</sup> There have been issues associated with the discharge of firearms on private property, focusing on noise and public safety issues. Staff is attempting to establish reasonable land use regulations in an attempt to address safety concerns by requiring discharged items remain on the subject parcel.

<sup>6</sup> In the late 1990's and early 2000's staff received numerous complaints from local property owners over the use of motorcycles and go-karts on private property. We are amending existing regulations to establish setback and land use buffer requirements to address these concerns.

~~(j)(k)~~ Outdoor paintball or similar activities.

~~(l)~~ Indoor/outdoor athletic facilities.

~~(k)(m)~~ Gymnasiums, and

~~(n)~~ Other similar uses.

(2) The minimum lot area for recreational facilities shall be two acres.

(3) No building shall be closer than the minimum requirements of the district in which it is located, or 20 feet to from the public right of way or private property line, whichever is greater or as specified herein.

(4) Outdoor athletic fields shall be a minimum of 50 feet from all property lines.

~~(5)~~ Outdoor athletic fields, pitch and putt courses, and/or play areas shall either be oriented or utilize a combination of screens, fences, nets, berms, and/or vegetation to protect the safety of adjacent properties and/or persons.

~~(B)~~

**(B) Standards for Specific Uses**<sup>7</sup>

**(1) Shooting Ranges**

~~(a)~~ Nothing in this section shall be construed as regulating hunting activities or the operation of a shooting range developed for, and exclusively utilized by, local, State, and/or Federal law enforcement agencies.

~~(b)~~ All shooting activities involving the discharge of a firearm for any purpose shall be conducted indoors. Outdoor ranges may only be used to support bow, knife, and other similar targeting activities.<sup>8</sup>

~~(c)~~ The building shall be designed and/or incorporate noise abatement devices to control or reduce the sound produced by gunfire.

~~(d)~~ No building where the discharge of a firearm occurs shall be closer than 50 feet to a property line.

~~(e)~~ No outdoor range shall be closer than 30 feet from a property line, street right-of-way, or access easement.

~~(f)~~ Outdoor shooting areas shall be required to install a Type A land use buffer around its perimeter.

**(2) Outdoor Paintball**

~~(a)~~ Areas where paintball activities occur shall be a minimum of 50 feet from all property lines.

~~(b)~~ A Type B land use buffer shall be installed around the perimeter of identified play areas.

**(3) Pitch and Putt Courses**

~~(a)~~ Pitch and putt areas shall be a minimum of 40 feet from all property lines.

~~(b)~~ A Type B land use buffer shall be installed around the perimeter of the property.

**(C) Standards for Class B Special Use Permit**

<sup>7</sup> These regulations would govern the development of commercial shooting ranges.

<sup>8</sup> Staff is recommending the discharge of a firearm connected to a shooting range be conducted indoors to address noise and safety concerns. Language within this section, however, exempts local, State and Federal public safety agencies from having to comply.

**(1) Submittal Requirements**

In addition to the information required by Section 2.7, the following information shall be supplied as part of the application for approval of this use:

- (a) A description of the exact type facility planned, the amount of area, including and number of members or participants expected, a site plan showing siting and size of existing and proposed building.
- (b) Access, parking, service and recreation areas for all planned facilities or existing facilities.
- (c) Plans, and elevation for all proposed and existing structures and descriptions of the color and nature of all exterior materials.
- (d) A landscape plan showing, at the same scale as the site plan, existing and proposed trees, shrubs, ground cover and any other landscape materials.
- (e) A signed statement from the owners or operators that there shall be no activity allowed that will have adverse effects on adjacent property. The statement shall also include a complete list of all recreational activities that will take place on the site.

**(2) Standards of Evaluation**

- ~~(a)~~ Within residential zoning districts allowable recreational facilities shall be limited to indoor/outdoor athletic fields, swim clubs, or tennis clubs.
- ~~(b)~~ The property shall have direct frontage on, and obtain vehicular access from, a publically dedicated and maintained right-of-way.<sup>9</sup>
- ~~(c)~~ Lot size shall be adequate for the method of sewage disposal proposed, and for the proposed recreational uses.
- ~~(d)~~ The site plan should show the boundaries of the site, the distances to the nearest residential structures, proposed or existing access points, parking and service areas, location of outdoor recreational facilities, and location of existing or proposed buildings.
- ~~(e)~~ The landscape plan shall be at the same scale as the site plan and should show how the facilities will be screened from the adjacent properties, in addition to proposed or existing trees, shrubs and ground cover.
- ~~(f)~~ Elevations of all structures and buildings. The structure shall be of such a nature as to preserve the residential character of the area.
- ~~(g)~~ There are no adverse impacts on the adjacent roads or residential property.

**~~5.7.25.7.3~~ Golf – Driving and Practice Range**

**~~(A) Standards for Class B Special Use Permit~~**

**~~(1) Submittal Requirements~~**

~~In addition to the information required by Section 2.7, the following shall be submitted as part of the application:~~

- ~~(a) A site plan showing the following:
  - ~~(i) All existing or proposed buildings, tee areas, lawn areas,~~
  - ~~(ii) Distances to nearest residential structures,~~~~

Staff is not including those portions of this section being re-numbered

<sup>9</sup> Staff is recommending this change in an attempt to ensure there is adequate access to a recreation facility.

### **Public Interest Area**

Land which contains public or quasi-public uses such as state parks, research forests or known archaeological or historical sites.

### **Public Safety Hazard and/or Nuisance**

Anything, which is injurious to the safety or health of an Orange County neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

### **Public Vehicular Areas**

Street in a platted subdivision which are open for vehicular traffic and have been offered for dedication to the public and where the offer for dedication has not been accepted.

### **Recreation Use, Non-Profit**

~~An indoor or outdoor recreation use owned by a not for profit corporation, according to the laws of North Carolina.~~

### **Recreation Use, Profit**

~~An indoor or outdoor recreation use owned by an entity other than a not for profit corporation.~~

### **Recreation Space**

Exterior area appropriately improved for common recreational use. Part of total and livability open space.

### **Recreation Space Ratio**

Recreation space ratio is the minimum square footage of open space in residential areas, suitable by location, size, shape, access and improvements, required for each square foot of gross land area. This area is a public or private exterior area improved for recreation of all residents, having a least dimension of 50 feet, and average dimension of 100 feet and a minimum area of 10,000 square feet.

### **Recreation Vehicle (RV)**

A self-propelled or towed vehicle, qualified to be licensed by the appropriate State Agency, and is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, providing short term recreational living accommodations, designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

### **Recreational Facility—For Profit Facilities**

Includes uses such as tennis clubs, swim clubs, racquet ball, squash clubs, pitch and putt courses, amusement areas, bowling allies, skating rinks, shooting ranges, billiard and pool halls, indoor athletic facilities and such similar uses open to the public or only to members providing access to recreational amenities or services.

### **Reference level**

The portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance. For structures within Special Flood Hazard Areas designated as Zone AE, the reference level is the top of the lowest floor.

### **Regulatory flood protection elevation**

The Base Flood Elevation plus the Freeboard establishes this elevation. In Special Flood Hazard Areas where Base Flood Elevations have been determined, this elevation shall be the Base Flood Elevation plus two feet of freeboard.

### **Rehabilitative Care Facility**

A facility licensed by the appropriate state agency, as a group care facility for individuals who are handicapped, aged, disabled, youthful offenders, addicted to alcohol or drugs, requiring professional health care, adult supervision, or rehabilitation.

**ORANGE COUNTY  
PLANNING BOARD ORDINANCE REVIEW COMMITTEE  
ACTION AGENDA ITEM ABSTRACT**  
Meeting Date: July 1, 2015

**Action Agenda  
Item No.   H**

**SUBJECT:** Unified Development Ordinance (UDO) Text Amendment – Public Hearing  
Process Revisions

---

**DEPARTMENT:** Planning and Inspections

**PUBLIC HEARING:** (Y/N)

No

**ATTACHMENT(S):**

**INFORMATION CONTACT:**

- |   |  |                                  |
|---|--|----------------------------------|
| 1. Comprehensive Plan and Unified Development Ordinance Amendment Outline Form (UDO & Zoning 2015-09) | Perdita Holtz, Planner III<br>Craig Benedict, Director | (919) 245-2578<br>(919) 245-2575 |
| 2. Draft UDO Text Amendment – Option A (Planning Board Review/ Recommendation Earlier in Process)     |  |                                  |
| 3. Draft UDO Text Amendment – Option B (Planning Board Review/ Recommendation Later in Process)       |  |                                  |
| 4. Planning Board Rules of Procedure  |  |                                  |
- 

**PURPOSE:** To review and comment upon Planning Director initiated Unified Development Ordinance (UDO) text amendments to revise the existing public hearing process for UDO and Comprehensive Plan-related items.

**BACKGROUND:** Please see Section B of Attachment 1 for relevant information. Two options are proposed to be presented at the September quarterly public hearing – Option A (Attachment 2) would have the Planning Board make its recommendation earlier in the process (e.g., before the public hearing) while Option B (Attachment 3) would retain the existing cadence of having the Planning Board make its recommendation after the public hearing. Both options would revise the existing process to no longer require a Planning Board quorum in order to hold the public hearing, but the Planning Board would still be expected to attend the quarterly public hearings.

Additionally, revisions to the Planning Board Rules of Procedure (Attachment 4) are proposed to reflect discussion by the BOCC at its May 12, 2015 work session.

The “Amendment Outline Form” (Attachment 1) for these amendments was approved by the BOCC at its June 2, 2015 regular meeting.

**FINANCIAL IMPACT:** Please refer to Section C.3 of Attachment 1.

**RECOMMENDATION(S):** The Planning Director recommends the Ordinance Review Committee review and comment on the proposed amendments to the UDO.

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# COMPREHENSIVE PLAN / FUTURE LAND USE MAP AND UNIFIED DEVELOPMENT ORDINANCE (UDO) AMENDMENT OUTLINE

UDO / Zoning-2015-09  
Revisions to Public Hearing Process

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## A. AMENDMENT TYPE

### Map Amendments

- Land Use Element Map:  
From: - - -  
To: - - -
- Zoning Map:  
From: - - -  
To: - - -
- Other:

### Text Amendments

- Comprehensive Plan Text:  
Section(s):
- UDO Text:
  - UDO General Text Changes
  - UDO Development Standards
  - UDO Development Approval Processes
 Section(s): 1.6, 2.1, 2.3, 2.7, 2.8, 5.10.2 and 2.11.6 (correct typo).
- Other: Planning Board Rules of Procedure to require that the Planning Board Chair (or Vice-Chair in Chair's absence) attend quarterly public hearings and BOCC meetings at which a decision is scheduled for items on which the Planning Board has made a recommendation.

## B. RATIONALE

- Purpose/Mission

To consider changes to the current public hearing process for Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas amendments. The current public hearing process is comprised of joint quarterly public hearings with the Planning

Board and BOCC, which requires a quorum of both Boards.

County staff and elected officials received comments during development of the Comprehensive Plan (2008) and Unified Development Ordinance (2011) about the perceived need to streamline and speed up decisions on applications.

- **Analysis**

This topic was discussed extensively in 2014, after being heard at the September 2014 quarterly public hearing. The public hearing for the amendments, as proposed in 2014, was closed in November 2014 when it became apparent that the proposal would change significantly enough to require another public hearing. The topic was recently discussed at the May 12, 2015 BOCC work session. Work session materials include links to prior materials and are available at: <http://www.orangecountync.gov/150512.pdf>.

Additional analysis will be part of the quarterly public hearing materials.

- **Comprehensive Plan Linkage (i.e. Principles, Goals and Objectives)**

**Land Use Goal 6:** A land use planning process that is transparent, fair, open, efficient, and responsive.

- **New Statutes and Rules**

N/A

## C. PROCESS

### 1. **TIMEFRAME/MILESTONES/DEADLINES**

a. BOCC Authorization to Proceed

June 2, 2015

b. Quarterly Public Hearing

September 8, 2015

c. BOCC Updates/Checkpoints

May 12, 2015 – work session

July 1, 2015 – Planning Board ORC (agenda materials are available to all interested persons)

November 5, 2015 – receive Planning Board recommendation and make decision

d. Other

### 2. **PUBLIC INVOLVEMENT PROGRAM**

**Mission/Scope:** Public Hearing process consistent with NC State Statutes and

Orange County ordinance requirements.

a. Planning Board Review:

Amendments proposed in 2014 were discussed extensively by the Planning Board in October, November, and December 2014. This discussion forms the basis of the 2015 proposed amendments.

July 1, 2015 – ORC (Ordinance Review Committee)  
 October 7, 2015 - recommendation

b. Advisory Boards:

_____	_____
_____	_____
_____	_____

c. Local Government Review:

Proposed text amendments will be sent to JPA partners prior to the public hearing, in accordance with the JPA Agreement.

_____	_____
_____	_____
_____	_____

d. Notice Requirements

Consistent with NC State Statutes – legal ad prior to public hearing

e. Outreach:

<input type="checkbox"/> General Public:	_____
<input type="checkbox"/> Small Area Plan Workgroup:	_____
<input type="checkbox"/> Other:	_____

**3. FISCAL IMPACT**

Consideration and approval will not create the need for additional funding for the provision of County services. Costs for the required legal advertisement will be paid from FY2015-16 Departmental funds budgeted for this purpose. Existing Planning staff included in the Departmental staffing budget will accomplish the work required to process this amendment.

**D. AMENDMENT IMPLICATIONS**

If adopted, the amendments would revise the existing process used by Orange County to review Comprehensive Plan, Unified Development Ordinance, and Zoning Atlas amendments.

## E. SPECIFIC AMENDMENT LANGUAGE

See Attachments 2 and 3 (two separate options).

**Primary Staff Contact:**

Perdita Holtz, AICP

Planning Department

919-245-2578

pholtz@orangecountync.gov

**Amendment Package to Revise the Existing Public Hearing Process****(Option A – Planning Board Review/Recommendation Before Public Hearing)**

## Notes

The pages that follow contain the amendments necessary to the Unified Development Ordinance (UDO) text to revise the existing public hearing process for Comprehensive Plan- and Unified Development Ordinance-related hearing items. This option would revise the existing cadence and would have the Planning Board make its recommendation before the public hearing.

Proposed additions/changes to existing UDO text are depicted in **red**. Some of the proposed changes utilize footnotes to provide a brief explanation as to rationale. Users are reminded that these excerpts are part of a much larger document (the UDO) that regulates land use and development in Orange County. The full UDO is available online at: <http://orangecountync.gov/planning/Ordinances.asp>

Please note that the page numbers in this amendment packet may or may not necessarily correspond to the page numbers in the adopted UDO because adding text may shift all of the text/sections downward.

Some text on the following pages has a large “X” through it to denote that these sections are not part of the amendments under consideration. The text is shown only because in the full UDO it is on the same page as text proposed for amendment. Text with a large “X” is not proposed for deletion; proposed deletions are shown in **red-strikethrough** text.

- (C) Each Township within the County shall be represented in the membership of the Board by at least one resident.
- (D) The Board of County Commissioners may by resolution establish rules related to the requirements for volunteer service on the Planning Board, appointment and removal of Planning Board members, and rules of procedure.
- (E) In establishing the Planning Board and its program, the Board of Commissioners intends that the Planning Board be guided by the following principle:
  - (1) The Comprehensive Plan, and any ordinances or other measures to effectuate it, shall be made with the general purpose of guiding and accomplishing a coordinated, and harmonious development of the County which will, in accordance with present and future needs, best promote health, safety and the general welfare, as well as efficiency in the process of development; including, among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of populations, the promotion of good civic design, wise and efficient expenditure of public funds, and adequate provision of public utilities, services, and other public requirements, and conservation of significant natural and man-made resources within the County.

### **1.6.2 Tenure and Membership Expectations**

---

- (A) The tenure of office shall be three years. Members are eligible for reappointment for a second consecutive full term. After two consecutive terms a member shall be ineligible for reappointment for one year after the expiration of the previous terms.
- (B) Appointments shall be made so that one-third of the terms expire in March of each calendar year.
- (C) Appointments made to fill vacancies shall be for the unexpired term and shall not be counted as a term in determining eligibility for reappointment.
- (D) A member whose term has expired shall continue to serve on the Board until his/her respective successor has been appointed.
- (E) Attendance at the regular meetings of the Board **and at quarterly public hearings<sup>1</sup>** shall be considered a prerequisite for maintenance of membership on the Planning Board. The Board of County Commissioners may declare a vacancy on the Planning Board because of a member's non-attendance, in accordance with the Planning Board Rules of Procedure.
- (F) Absence due to sickness, death of an immediate family member or similar reason shall be considered approved absences and shall not affect the member's status. In the event of long illness or other cause for prolonged absence, the member shall be replaced.
- (G) The Board of County Commissioners may by resolution establish rules related to tenure and membership expectations. If the terms of such resolution, or policy created thereby, conflict with the terms of this section 1.6.1 or 1.6.2 the terms of the resolution or policy shall control.

### **1.6.3 Duties**

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As provided for in 153A-321 of the General Statutes of North Carolina, as amended, the Planning Board shall have the following general Powers and Duties:

- (A) Make studies of Orange County and surrounding areas;
- (B) Determine objectives to be sought in the development of Orange County;
- (C) Propose and recommend plans for achieving these objectives;

<sup>1</sup> Proposed addition to clarify that Planning Board members are expected to attend the quarterly public hearings.

## ARTICLE 2: PROCEDURES

### SECTION 2.1: REVIEW AND DECISION MAKING AUTHORITY – SUMMARY TABLE

The following table provides a brief synopsis of the review and decision-making processes for development applications.

TABLE 2.1: REVIEW AND DECISION MAKING AUTHORITIES						
R=REVIEW DM=DECISION MAKER PH=PUBLIC HEARING						
ZONING/DEVELOPMENT REVIEW RELATED PROCEDURES	PLANNING DIRECTOR	EROSION CONTROL OFFICER	DEVELOPMENT ADVISORY COMMITTEE (DAC)	BOARD OF ADJUSTMENT	PLANNING BOARD	BOCC
Zoning Compliance Permits	R and DM	R	R			
Soil Erosion and Sedimentation Control Permits		R and DM				
Stormwater Management Plans		R and DM				
UDO Text Amendments	R		R		R [1]	DM and PH
Zoning Atlas Amendments	R		R		R [1]	DM and PH
Special Use Permits	R	R	R	DM and PH Class B	R [1] Class A	DM and PH Class A
Zoning Variances	R		R	DM and PH		
Conditional Use	R	R	R		R [1]	DM and PH
Appeals/Interpretations	R		R	DM and PH		
Comprehensive Plan Amendments	R				R [1]	DM and PH
Subdivision Related Procedures						
Exempt	R and DM					
Minor	R and DM	R	R			
Major	R	R	R		R and DM [2]	R and DM
Conditional Use	R	R	R		R [1]	R, DM, and PH
Appeal						
NOTES						
[1]	<del>The Planning Board attends a Joint Public Hearing with the BOCC to review all zoning related items requiring a public hearing. The Planning Board will have the item referred to it and shall have up to 90 days to comment on the application.</del> The Planning Board reviews applications and makes a recommendation prior to the public hearing held by the Board of County Commissioners. The Board of County Commissioners may choose to refer an application back to the Planning Board at the conclusion of the public hearing.					
[2]	The Planning Board approves the Concept Plan for a Major Subdivision and then makes a recommendation on the Preliminary Plat to the BOCC.					

**2.2.8 Effect of Denial on Subsequent Applications**

(A) If the Board of County Commissioners denies an application, or the application is withdrawn subsequent to notice of the public hearing thereon, no application for the same or similar amendment, affecting the same property or a portion of it, may be submitted for a period of one year. Said one year period begins on the date of denial or withdrawal, as appropriate.

**SECTION 2.3: COMPREHENSIVE PLAN AMENDMENTS**

**2.3.1 Review and Approval Flow Chart**

The review and approval process for Comprehensive Plan Amendments is shown in the procedure's flowchart.

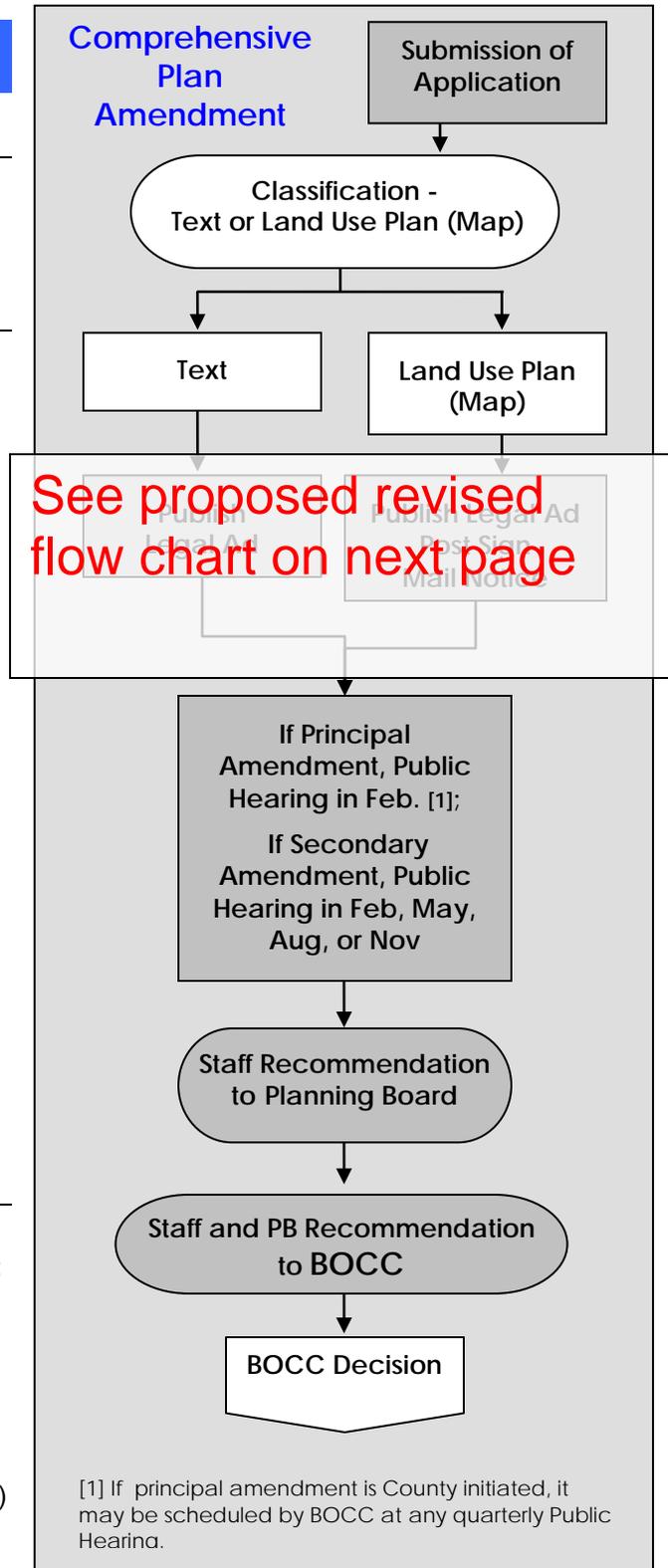
**2.3.2 Generally**

- (A) The Comprehensive Plan shall be so prepared that all or individual elements and parts thereof may be adopted and/or amended by the Board of Commissioners.
- (B) For the purpose of establishing and maintaining sound, stable, and desirable development within Orange County, the Comprehensive Plan or portion thereof shall not be amended except as follows:
  - (1) Because of changed or changing conditions in a particular area or areas of the County;
  - (2) To correct an error or omission; or
  - (3) In response to a change in the policies, objectives, principles or standards governing the physical development of the County.

**2.3.3 Initiation of Amendments**

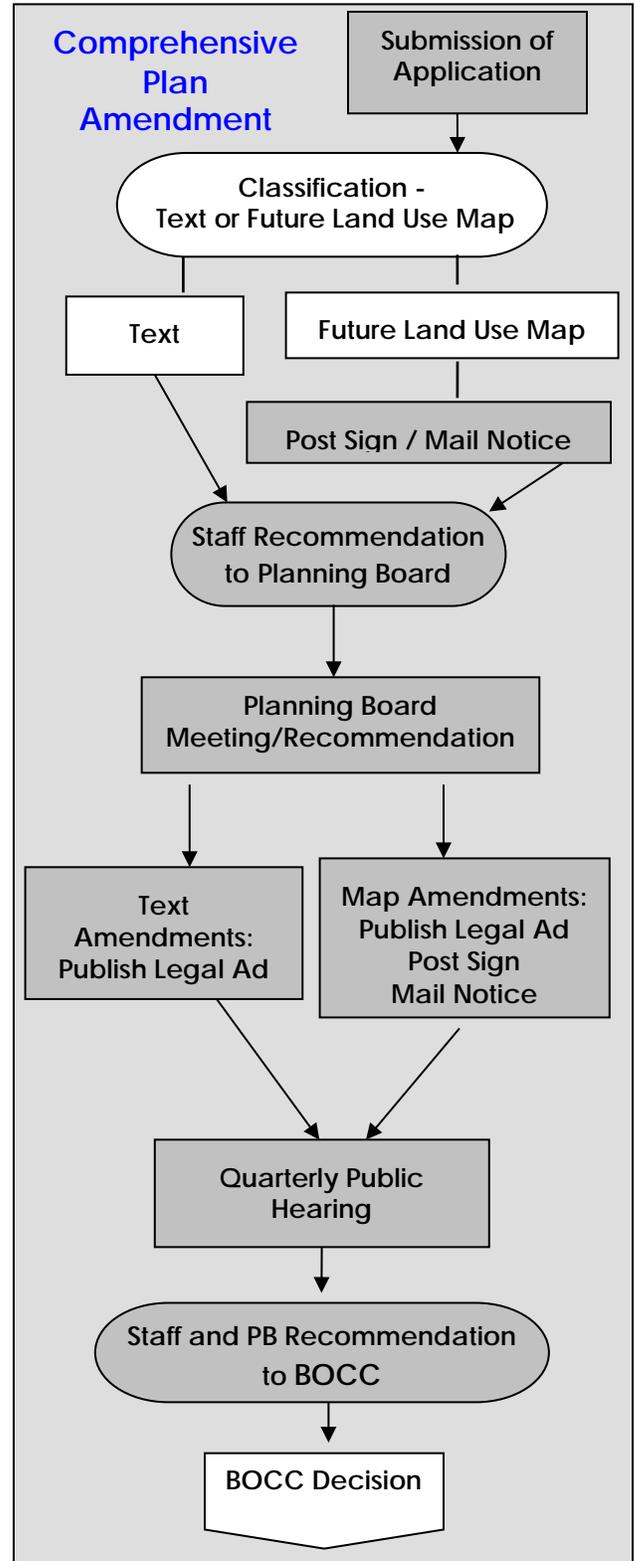
An amendment to the Comprehensive Plan or portion thereof may be initiated by:

- (A) The Board of Commissioners on its own motion;
- (B) The Planning Board;
- (C) Application, by any person or agency, which accurately and completely sets forth the reason(s) for the proposed amendment as



See proposed revised flow chart on next page

Proposed flow chart for Section 2.3.1



prescribed in Section 2.3.2(B); or

- (D) The Planning Director.

### 2.3.4 Classification of Amendments<sup>2</sup>

---

Amendments to the Comprehensive Plan or portion thereof are classified as "principal" or "secondary" amendments.

Staff proposes this entire section for deletion (see footnote below)

**(A) Principal Amendments Include**

- (1) Additions to or modifications of policies, objectives, principles or standards;
- (2) The creation of new activity nodes or additions to existing activity nodes which exceed ten acres in land area; or
- (3) Proposals for new freestanding plan areas or additions to existing areas that exceed 100 acres in land area.

**(B) Secondary Amendments Include**

- (1) The expansion of an activity node where the additional area is contiguous to an existing node and does not increase its land area by more than ten acres;
- (2) The expansion of a designated plan area where the additional area is contiguous to the existing plan designation and does not increase its land area by more than 100 acres;
- (3) A correction of an error or omission; or
- (4) Revisions to any factual or descriptive material.

### 2.3.5 Public Hearing Required

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- (A)** A public hearing shall be held before adoption of any proposed Comprehensive Plan amendment. The Board of County Commissioners ~~and the Planning Board~~<sup>3</sup> shall hear applications and receive public comment for proposed Comprehensive Plan amendments in a Quarterly Public Hearing.
- (B)** ~~The public hearing is legislative in nature and the hearing shall normally be closed at the conclusion of the hearing. Closure of a legislative hearing does not bar discussion of an application outside of the public hearing setting.~~
- (C)** ~~A quorum of Planning Board members shall not be necessary to conduct the public hearing.~~

### 2.3.6 Notice Requirements for Public Hearings

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- (A)** Notice of the public hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the County, stating the time and place of such hearing and the substance of the proposed amendment.
- (B)** This notice shall appear in said newspaper for two consecutive weeks with the first notice appearing not less than ten days nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

<sup>2</sup> Staff proposes that this entire section (2.3.4) be deleted because it is relevant only in conjunction with Section 2.3.7. Rather than limiting "principal" amendments to being heard "generally" only once per year, staff proposes that any Comprehensive Plan amendment could be heard at any of the quarterly public hearings. If this Section is deleted, subsequent sections would be renumbered and section reference updates might occur in other sections/articles of the UDO.

<sup>3</sup> Since a quorum of Planning Board members will no longer be necessary to hold a public hearing, the public hearing would no longer be a joint hearing.

- (C) The minimum published size of the notice shall be 25 square inches.
- (D) In the case of amendments to the ~~Land Use Plan (map)~~ Future Land Use Map<sup>4</sup>, the Planning Director shall prominently post a notice of the public hearing on the site proposed for the land use ~~classification~~ change or on an adjacent public street or highway right of way not less than ten days before the date set for the public hearing.
  - (1) When multiple parcels are included within a proposed ~~Land Use Plan (map)~~ Future Land Use Map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons.
- (E) In the case of amendments to the ~~Land Use Plan (map)~~ Future Land Use Map, written notice of the public hearing shall be sent by first-class mail to all property owners, as listed in the Orange County tax records, whose property is affected (property that is included in the proposed ~~land-use-plan~~ Future Land Use Map amendment) and all property owners within 500 feet. Said notice shall be mailed at least 14 days, but not more than 25 days, prior to the date of the public hearing.

### 2.3.7 Consideration of Amendments<sup>5</sup>

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Staff proposes A, B, and C for deletion (see footnote)

- (A) Principal amendments shall generally ~~only~~ be considered ~~only~~ once each year at the first quarterly public hearing ~~in February of the calendar year, usually held in February~~<sup>6</sup>.
- (B) If a principal amendment is scheduled ~~by the Board of County Commissioners~~<sup>7</sup> for other than the ~~February first~~ quarterly public hearing of the calendar year, it shall be scheduled during one of the quarterly public hearings held ~~in May, August, and November~~ later in the year .
- (C) Secondary amendments may be considered four times each year at ~~the a~~ quarterly ~~joint~~ public hearings, ~~in February, May, August, and November~~ as designated each year on the Board of County Commissioners meeting calendar.
- (D) A proposed amendment may be considered in conjunction with a rezoning request for the same property if the requests are in compliance with an adopted small area plan.
- (E) Requests for a rezoning not in compliance with an adopted small area plan, conditional use district, and/or special use permit may only be considered at subsequent hearings or meetings following approval of the proposed amendment to the Comprehensive Plan.

### 2.3.8 Application Requirements

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- (A) **Generally**
  - (1) All applications for amendments to the Comprehensive Plan shall be submitted on forms supplied by the Planning Department and shall be signed.
  - (2) Three copies of the application shall be submitted to the Planning Director.

<sup>4</sup> The name of this map was changed in the Comprehensive Plan in 2012 and should be updated here.

<sup>5</sup> Staff proposes that (A), (B), and (C) of this section be deleted because staff believes that any proposed amendment to the Comprehensive Plan should be able to be heard at any of the quarterly public hearings. Allowing principal amendments "generally" only once per year imposes constraints. If there is not interest in allowing consideration of any amendment at any of the four QPHs per year, then the language should be modified as shown.

<sup>6</sup> Staff is suggesting the language be less constrictive in case the BOCC wants to move quarterly public hearing dates in the future when the annual BOCC meeting calendar is created in the fall of each year. For example, this was done for the public hearing that was formerly held in August of each year but is now held in September.

<sup>7</sup> The BOCC does not schedule amendments (staff is responsible for doing so) but if a principal amendment were proposed for a QPH other than the first hearing of the year, staff would coordinate with the Manager and Chair/Vice-Chair to gain input into whether the application should be allowed to be heard at one of the three later QPHs.

- (3) Before accepting any amendment application, the Planning Director shall ensure that it contains all required information, as specified in this Ordinance. Applications which are not complete, or otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant, with a notation by the Planning Director of the deficiencies in the application.

**(B) Contents of Application**

Applications for amendments to the Comprehensive Plan, without limiting the right to file additional material, shall contain at least the following:

- (1) For amendments to the ~~Land Use Plan (map)~~ **Future Land Use Map** within the Land Use Element, a map at a legible scale adequately illustrating the land which would be covered by the proposed map amendment, and a complete list of Property Identification Numbers (PIN) for the properties;
- (2) For amendments to the Comprehensive Plan text, a copy of the existing text provision(s) which the applicant proposes for amendment, and a written statement which describes in detail changes which the applicant proposes to make to the text of the Comprehensive Plan and the rationale for the proposed amendment consistent with the standards established in this Ordinance; and
- (3) All other circumstances, factors and reasons which the applicant offers in support of the proposed Comprehensive Plan amendment.

### 2.3.9 Analysis and Recommendation

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The Planning Director shall cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners.

### 2.3.10 Planning Board Review<sup>8</sup>

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- ~~(A) Following the public hearing, all proposed amendments shall be referred to the Planning Board for consideration and recommendation.~~
- ~~(B) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within three regularly scheduled Planning Board meetings unless the Board of County Commissioners grants an extension.~~
- ~~(C) If the Planning Board fails to make a recommendation within the time allotted in subsection (B), the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.~~
- ~~(D) Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.~~
- ~~(E) Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of~~

<sup>8</sup> These proposed revisions incorporate the discussion the Planning Board had in October, November, and December 2014 and which the BOCC discussed on May 12, 2015. The cadence of the review process would be revised to have the Planning Board make its recommendation prior to the public hearing. Notices would be mailed to nearby property owners and a sign(s) would be posted; this revision will notify nearby property owners of potential changes much earlier in the process. Although the Planning Board meeting would not be an official public hearing, interested persons could address the Planning Board (the existing requirement for written comments only is not proposed to continue in this revised process) and the Planning Board can take all public comments into consideration when making its recommendation.

~~County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.~~

- (F) All proposed amendments shall be referred to the Planning Board for consideration and recommendation prior to the public hearing, in accordance with review/meeting calendars published each calendar year. The Planning Board shall be allotted a minimum of 30 calendar days to make its recommendation.
- (G) In the case of amendments to the Future Land Use Map, the Planning Director shall prominently post a notice of the Planning Board meeting on the site proposed for the land use classification change or on an adjacent public street or highway right of way not less than ten days before the Planning Board meeting.
  - (1) When multiple parcels are included within a proposed Future Land Use Map amendment, a posting on each individual parcel is not required, but sufficient notices shall be posted to provide reasonable notice to interested persons.
- (H) In the case of amendments to the Future Land Use Map, written notice of the Planning Board meeting shall be sent by first-class mail to all property owners, as listed in the Orange County tax records, whose property is affected (property that is included in the proposed Future Land Use Map amendment) and all property owners within 500 feet. Said notice shall be mailed at least ten days, but not more than 25 days, prior to the date of the Planning Board meeting.
- (I) Interested persons may address the Planning Board at the Planning Board's meeting and public comments may be taken into consideration by the Planning Board in making its recommendation.
- (J) The Planning Board's action on an application shall be one of the following:
  - (1) Make no recommendation,
  - (2) Recommend approval,
  - (3) Recommend denial,
  - (4) Recommend approval but with specified changes, or
  - (5) Make a preliminary recommendation, of either (1) through (4) above, with a request to the Board of County Commissioners that if significant new information is presented at the public hearing, the Board of County Commissioners refer an application back to the Planning Board for further review and a potential new recommendation.
    - (a) The Board of County Commissioners is not bound to referring an application back to the Planning Board.

### **2.3.11 Action by Board of County Commissioners**

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- (A) The Board of County Commissioners shall not consider enactment of ~~the a~~ proposed amendment until the Planning Board either makes its recommendation or takes no action on the application as prescribed in ~~this section~~ Section 2.3.10.

<sup>9</sup> NCGS §153A-344 states that: Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report. The board of commissioners is not bound by the recommendations, if any, of the planning board.

Although this section of the statutes addresses zoning amendments, staff is recommending that the process for comprehensive plan amendments be the same in order to provide consistency and less confusion.

- ~~(B) In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.~~
- ~~(C) The Board of Commissioners, upon receipt of a recommended Comprehensive Plan or portion thereof from the Planning Board, shall consider such recommendations and adopt them by resolution, either unchanged or with modifications.~~
- ~~(B) The Board of County Commissioners shall not consider enactment of a proposed amendment until after the required public hearing has been held. At the conclusion of the public hearing, the Board of County Commissioners may do one of the following:
 
  - ~~(1) Continue the public hearing to a date/time certain,~~
  - ~~(2) Close the public hearing and refer the application back to the Planning Board for further review,~~
  - ~~(3) Close the public hearing and defer a decision to a later Board of County Commissioners meeting date, or~~
  - ~~(4) Close the public hearing and make a decision.~~~~
- ~~(C) In making its decision, the Board of Commissioners shall consider comments made at the public hearing, the Planning Board's recommendation, and the Planning Director's recommendation.~~
- ~~(D) The Board of County Commissioners is not bound by comments and recommendations and may make a decision different from comments and/or recommendations it receives.~~
- ~~(E) Decisions shall normally be adopted by resolution except in cases where comprehensive plan amendments are also included with Unified Development Ordinance amendments, the comprehensive plan amendments may be incorporated into the ordinance approving the other amendments.~~

## SECTION 2.4: ZONING COMPLIANCE PERMITS

### 2.4.1 Applicability

- ~~(A) As required by this Ordinance, a Zoning Compliance Permit must be issued before any new site development, building, structure, or vehicular use area may be erected, constructed or used.~~
- ~~(B) Submittal and approval of a site plan (see Section 2.5) is required for issuance of a Zoning Compliance Permit except for:
 
  - ~~(1) Single-family detached dwellings and duplexes, and accessory structures to those residential uses shall require a plot plan as detailed within Section 2.4.3 of this Ordinance.  
  
In those instances, however, where the proposed level of land disturbance exceeds established thresholds as detailed within Section 6.14.5 of the Ordinance a formal site plan, prepared in accordance with Section 2.5, shall be required for submittal and approval. This site plan shall contain all required elements associated with obtaining a Zoning Compliance, Erosion Control, and Stormwater permit as detailed herein.~~
  - ~~(2) Interior renovation or repair of an existing structure, provided the use of the lot and/or structure has not changed.~~~~
- ~~(C) Issuance of a Zoning Compliance Permit is required prior to beginning the excavation for the construction, moving, alteration, or repair, except ordinary repairs, of any building or other structure, including an accessory structure. The Zoning Compliance Permit shall include a determination that plans, specifications and the intended use of the structure conforms to the provisions of this Ordinance.~~

- (B)** A Final As-Built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance.
- (1)** It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities.
    - (a)** Elevation certification shall be prepared by, or under the direct supervision of, a North Carolina licensed professional Land Surveyor or Professional Engineer and certified by the same.
  - (2)** The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance.
  - (3)** In some instances, another certification may be required to certify corrected as-built construction.
  - (4)** Failure to submit the certification or failure to make said corrections required shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
- (C)** If a manufactured home is placed within Zone AE and the elevation of the chassis is more than 36 inches in height, an engineered foundation certification is required per Section 6.6.1(B)(3).
- (D)** If a watercourse is to be altered or relocated, the following shall be submitted by the permit applicant prior to issuance of a floodplain development permit:
- (1)** A description of the extent of watercourse alteration or relocation;
  - (2)** An engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and
  - (3)** A map, drawn to scale, showing the location of the proposed watercourse alteration or relocation.
- (E)** Certification Exemptions
- The following structures, if located within Zone AE, are exempt from the elevation/flood proofing certification requirements specified in items (A) and (B) above:
- (1)** Recreational vehicles meeting requirements of Section 6.6.1(B)(5);
  - (2)** Temporary structures meeting requirements of Section 6.6.1(B)(7); and
  - (3)** Accessory Structures with any dimension that is 12 feet or greater in height, width, or depth, meeting requirements of Section 6.6.1(B)(8).

## SECTION 2.7: SPECIAL USE PERMITS

### 2.7.1 Generally

- (A)** Any use or development designated by applicable zoning district regulations contained within Article 5 as a special use, or as allowed only pursuant to a special use permit (either Class A or Class B), may be established in that district only after the use or development is authorized by a validly issued and recorded special use permit.
- (B)** This section sets forth required review and approval procedures for submittal, review, and approval of applications for special use permit.
- (C)** A special use permit authorizes its holder to use or develop a particular parcel of land in a particular way, as specified by the terms and conditions of the special use permit.
- (D)** A special use permit imposes on its holder the responsibility of ensuring that the authorized use or development continues to comply with the terms and conditions of approval.

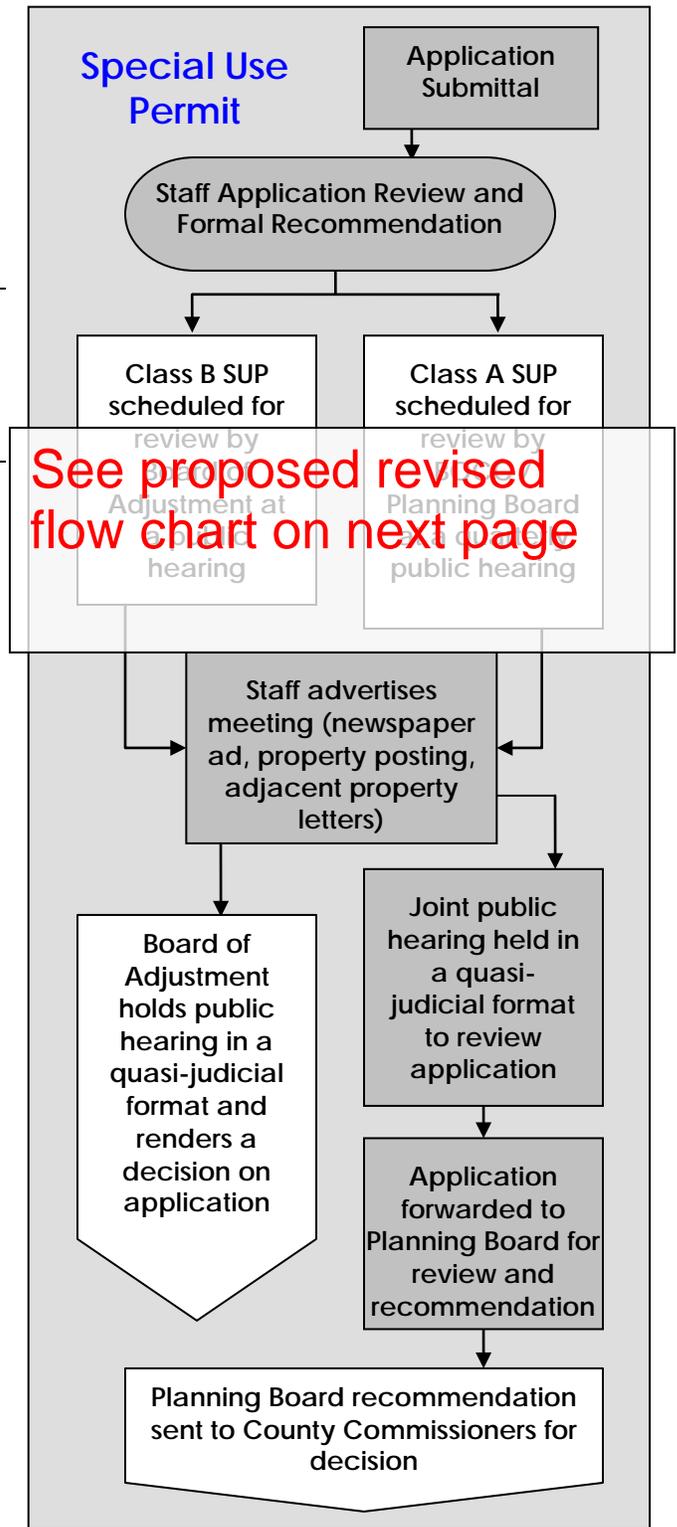
- (E) Issuance of a special use permit does not relieve the holder of the special use permit of the additional responsibility of obtaining a building permit or any other permit or approval required by any other applicable law.

**2.7.2 Review and Approval Flow Chart**

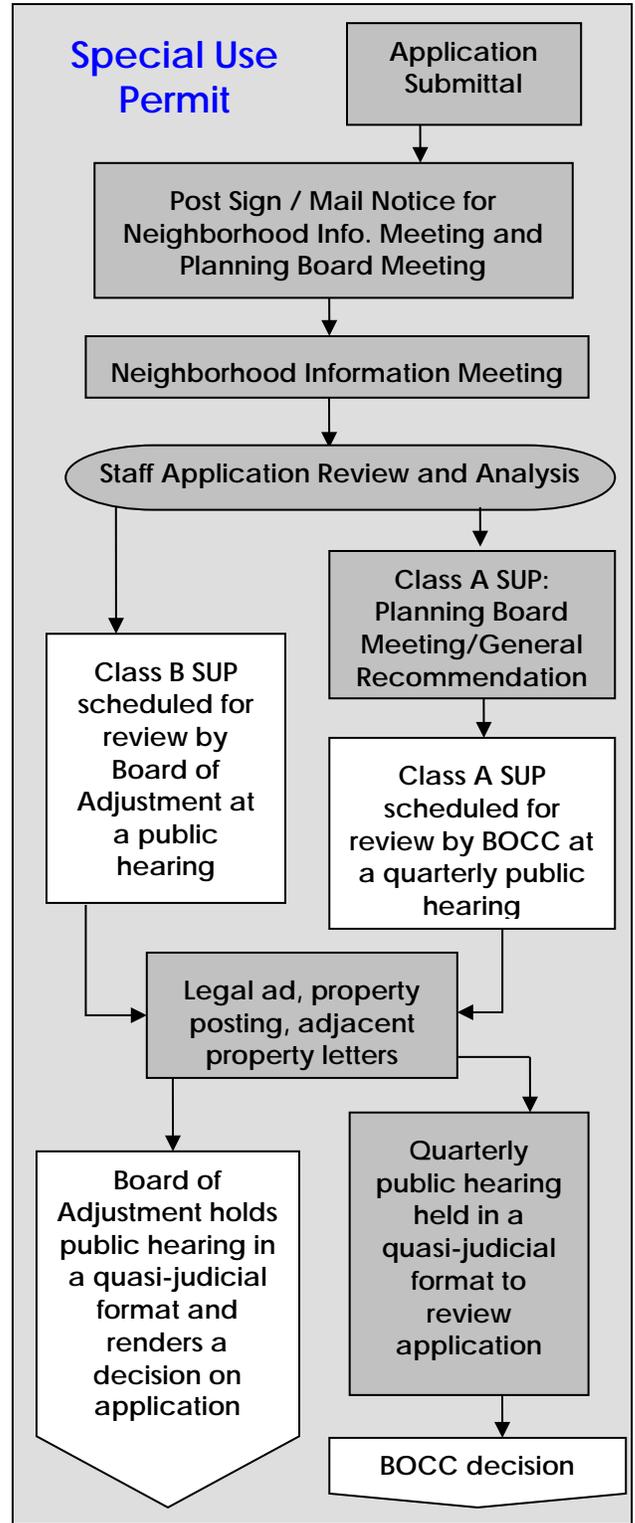
The review and approval process for Special Use Permits is shown in the procedure's flowchart.

**2.7.3 Application Requirements**

- (A) Applications for a Special Use shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance.
- (B) Applications shall include:
  - (1) A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.
  - (2) The name(s) and address(es) of the owner(s) of the property involved.
  - (3) Relevant information needed to show compliance with the general and specific standards governing the Special Use (See Articles 5 and 6).
  - (4) For Class A Special Uses 26 copies of the site plan, and for Class B Special Uses 10 copies of the site plan, prepared by a registered North Carolina land surveyor, landscape architect, architect, or engineer, which shall contain the information listed in Section 2.5.
  - (5) If the application involves a Preliminary Subdivision Plat, 26 copies of the Plat prepared in accordance with Section 7.14 shall be provided.
  - (6) A list of all parcels located within 500 feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.
  - (7) Elevations of all structures proposed to be used in the development.
  - (8) For Class A Special Uses 26 copies and for Class B Special Uses 10 copies of the Environmental Assessment and/or Environmental Impact Statement, if required by Section 6.16.



Proposed flow chart for Section 2.7.1



There are no proposed changes in this page. It is provided for context.

- (9) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.
- (10) Statement from the applicant indicating the anticipated development schedule for the build-out of the project.
- (11) Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum).

#### **2.7.4 Staff Review**

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- (A) The Planning Director shall cause an analysis to be made of the application by qualified representatives of the County and other agencies or officials as appropriate.
  - (1) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County's Agricultural Preservation Board for review and comment.
    - (a) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
    - (b) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.
- (B) The Planning Director shall submit the analysis to the Board of County Commissioners and the Planning Board, in the case of Class A Special Uses, or the Board of Adjustment, in the case of Class B Special Uses.
- (C) The appropriate Board reviewing the application shall receive and enter the analysis into evidence during the public hearing. The analysis shall be subject to examination by all interested parties and the Planning Director shall be subject to cross-examination regarding the analysis.
- (D) The Planning Director shall not make a recommendation on the general findings detailed within Section 5.3 of this Ordinance

#### **2.7.5 Neighborhood Information Meeting**

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- (A) Before a Public Hearing may be held for a Special Use the applicant is required to schedule a minimum of one neighborhood information meeting. The purpose of the meeting is to obtain surrounding property owner input and comments on the proposed development project and allow staff an opportunity to explain the review process associated with the request.
- (B) The applicant shall obtain property owner mailing address information from the Orange County Planning Department, which shall utilize Orange County Land Records data, and shall mail certified notices of the meeting date and time to each property owner within 500 feet of the property for which a Special Use has been requested.
- (C) The applicant shall mail notice of the Neighborhood Information Meeting a minimum of 14 days prior to the date of the meeting.
- (D) The applicant shall post a sign on the property advertising the date, place, and time of the meeting a minimum of 10 days prior to the date of the meeting.
- (E) The meeting shall be held a minimum of 45 days prior to the date of the Public Hearing.
- (F) Neighborhood information meetings for telecommunication facilities shall be held in accordance with the provisions of Section 5.10.8 (B) (2).

### **2.7.6 Planning Board Review and Recommendation – Class A Special Use Permits<sup>10</sup>**

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- (A) All Class A Special Use Permit applications shall be referred to the Planning Board for review and recommendation after the Neighborhood Information Meeting but prior to the public hearing, in accordance with review/meeting calendars published each calendar year.
- (B) The Planning Director shall prominently post a notice of the Planning Board meeting on the site proposed for a Class A Special Use Permit or on an adjacent public street or highway right of way not less than ten days before the Planning Board meeting.
  - (1) When multiple parcels are included within an application, a posting on each individual parcel is not required, but sufficient notices shall be posted to provide reasonable notice to interested persons.
- (C) Written notice of the Planning Board meeting shall be sent by first-class mail to all property owners, as listed in the Orange County tax records, whose property is affected (property that is included in the Class A Special Use Permit application) and all property owners within 500 feet. Said notice shall be mailed at least ten days, but not more than 25 days, prior to the date of the Planning Board meeting.
  - (1) If date timelines for the Neighborhood Information Meeting and Planning Board meeting allow, the notices for the two meetings may be combined into one mailing.
- (D) The Planning Board meeting is not quasi-judicial in nature and interested persons may address the Planning Board at the Planning Board's meeting. However, speakers shall be informed regarding the difference between hearsay and testimony and shall be told that hearsay cannot form the basis of a decision.
- (E) The Planning Board's shall make a general recommendation on the application but shall not make the findings required in Section 5.3.2(A). The Planning Board's action on an application shall be one of the following:
  - (1) Make no recommendation,
  - (2) Recommend approval,
  - (3) Recommend denial,
  - (4) Recommend approval but with specified changes, or
  - (5) Make a preliminary recommendation, of either (1) through (4) above, with a request to the Board of County Commissioners that if significant new information is presented at the public hearing, the Board of County Commissioners refer an application back to the Planning Board for further review and a potential new recommendation.
    - (a) The Board of County Commissioners is not bound to referring an application back to the Planning Board.

### **2.7.7 Notice Requirements for Class A Special Use Permits**

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- (A) The Planning Director shall give public notice of the date, time and place of the public hearing to be held to receive comments, testimony and exhibits pertaining to the application for a Special Use.
- (B) Such notice shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten days nor more than 25 days prior to the date of the hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

<sup>10</sup> This is a new section that has caused subsequent sections in 2.7 to be automatically renumbered.

- (C) The Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.
- (D) Written notice shall be sent by certified mail to all adjacent property owners not less than 15 days before the hearing date. Adjacent property owners are those whose property lies within five hundred feet of the affected property and whose names and addresses are currently listed in the Orange County tax records.

#### **2.7.8 Notice Requirements for Class B Special Use Permits**

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Notice Requirements for Class B Special Use Permits shall follow the procedures in Section 2.12.6.

#### **2.7.9 Nature of Proceedings**

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- (A) The review of Special Use Permit applications shall be conducted during a public hearing by the decision-making board.
- (B) The review of a Special Use Permit application is a quasi-judicial process, where the Board responsible for rendering a decision acts much like a panel of judges. The Board hears factual evidence and sworn testimony presented at an evidentiary hearing, and then makes findings of fact supported by competent, substantial, and material evidence.
- (C) The chair or presiding officer of the hearing shall swear all parties intending to present evidence or testimony during the hearing.
- (D) The chair or presiding officer may take whatever action is necessary to limit testimony to the presentation of new factual evidence that is material to the application, to ensure fair and orderly proceedings, and to otherwise promote the efficient and effective gathering of evidence. Such actions may include:
  - (1) Barring the presentation of obvious hearsay evidence,
  - (2) Barring the presentation of non-expert opinion,
  - (3) Interrupting digressions into immaterial testimony,
  - (4) Interrupting repetitive testimony,
  - (5) Reasonably limiting the time allotted each witness or cross-examination,
  - (6) Providing for the selection of spokespersons to represent groups of persons with common interests,
  - (7) Interrupting personal attacks, and/or
  - (8) Ordering an end to disorderly conduct.
- (E) Where the Board finds compliance with the general standards, specific rules governing the specific use, and that the use complies with all required regulations and standards, the application must be approved unless the Board shall also find, in some specific manner, that:
  - (1) the use will not maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
- (F) Those opposing approval of the application on the grounds that the use will not promote the public health, safety and general welfare shall have the burden of establishing, by competent material and substantial evidence, the specific manner in which the proposed use does not satisfy the requirements for approval of the application for a Special Use.

#### **2.7.10 Review and Decision**

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- (A) For Class A Special Use permits, the following shall apply:

- (1) The Board of County Commissioners ~~and Planning Board~~ shall review the application during ~~a regularly scheduled public hearing~~ one of the four quarterly public hearings that occur each calendar year.
  - ~~(2) Following review at a public hearing, the Special Use permit application shall be referred to the Planning Board for its consideration and recommendation.~~
  - ~~(3) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within three regularly scheduled meetings.~~
  - ~~(4) If the Planning Board fails to make a recommendation within the time allotted within subsection (3) above, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.~~
  - ~~(5) After receipt of any Planning Board recommendation and closure of the public hearing, the Board of County Commissioners shall take action upon the application. This action shall be one of the following:~~
    - ~~(a) Approval;~~
    - ~~(b) Approval with conditions; or~~
    - ~~(c) Denial.~~
  - (6) A quorum of Planning Board members shall not be necessary to conduct the public hearing.
  - (7) At the conclusion of the public hearing, the Board of County Commissioners may do one of the following:
    - (a) Continue the public hearing to a date/time certain,
    - (b) Close the public hearing and refer the application back to the Planning Board for further review,
    - (c) Close the public hearing and defer action to a later Board of County Commissioners meeting date, or
    - (d) Close the public hearing and act upon the application.
  - (8) Action on the application shall be one of the following:
    - (a) Approval;
    - (b) Approval with conditions; or
    - (c) Denial.
- (B) For Class B Special Use Permits, the following shall apply:
- (1) The Board of Adjustment shall review the application during a regularly scheduled public hearing.
  - (2) The Board of Adjustment shall conduct the hearing in accordance within the provisions detailed in this Section as well as those contained within Section 2.12.
  - (3) After completion of the public hearing, the Board of Adjustment shall take action upon the application. This action shall be one of the following:
    - (a) Approval;
    - (b) Approval with conditions; or
    - (c) Denial.

### 2.7.11 Standards of Evaluation

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The following specific standards shall be used in deciding on an application:

- (b) A substantial change to the physical dimensions of the wireless support structure which alters facts or conditions relied upon by the County when granting the original permit. It shall be the County's burden to demonstrate that such a scenario constitutes a substantial change to the physical dimensions of the wireless support structure.
- (c) The addition of an appurtenance to the body of the telecommunication facility that protrudes horizontally from the edge of the wireless support structure the greater of:
- (i) More than 20 feet or
  - (ii) More than the width of the wireless support structure at the level of the appurtenance.
- Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable.
- (d) Increasing the square footage of the existing equipment compound by more than 2,500 square feet
- (C) The Planning Director shall, before making a determination as to whether a proposed action is a minor change or a modification, review the record of the proceedings on the original application for approval of the Special Use. The determination shall be based upon the request of the applicant, the review of the record of the approval of the original request and the Planning Director's findings under the criteria of subsection (B) above.
- (D) The Planning Director shall, if it is determined that the proposed action is a minor change, state the findings in writing to the applicant. The applicant shall file an amended site plan, or written statement, outlining in detail the minor change(s) proposed. The Planning Director shall file the amended site plan or written statement with the approved site plan.
- (E) If it is determined that the proposed action is a modification, the Planning Director shall require the applicant to submit a request for modification of the approved special use permit. The following procedures shall be adhered to in the case of a modification:
- (1) The applicant shall provide an amended site plan and written narrative outlining the specific changes requested.
  - (2) The Planning Director shall submit the request to the Board that approved the original application.
  - (3) The Board shall set a public hearing to receive testimony concerning the modification request. Any public hearing called pursuant to a modification of an approved special use permit shall be held in conformity with the relevant public notification requirements contained in this Article.
  - (4) The Board may approve, approve with conditions, or deny the application for a modification.
  - (5) The Planning Director shall file the Board's action in the Planning Department as an amendment request to the original application and shall notify the applicant of the Board's action.

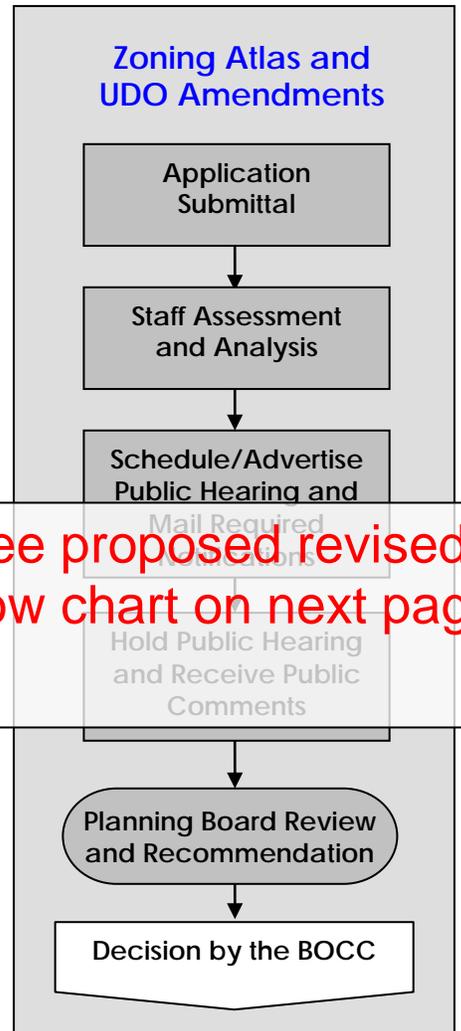
## SECTION 2.8: ZONING ATLAS AND UNIFIED DEVELOPMENT ORDINANCE AMENDMENTS

### 2.8.1 Review and Approval Flow Chart

The review and approval process for a Zoning Atlas and Unified Development Ordinance Amendment is shown in the procedure's flowchart.

**2.8.2 Amendment Initiation**

- (A) An amendment to this Ordinance or the Zoning Atlas may be initiated by:
  - (1) The Board of County Commissioners on its own motion;
  - (2) The Planning Board;
  - (3) Application, by any person or agency, or
  - (4) The Planning Director.
- (B) If a request for consideration of an amendment proposal is submitted directly to the Board of County Commissioners, said Board may decline to consider the request or may refer the amendment proposal to the Planning Director for preparation of an amendment application.

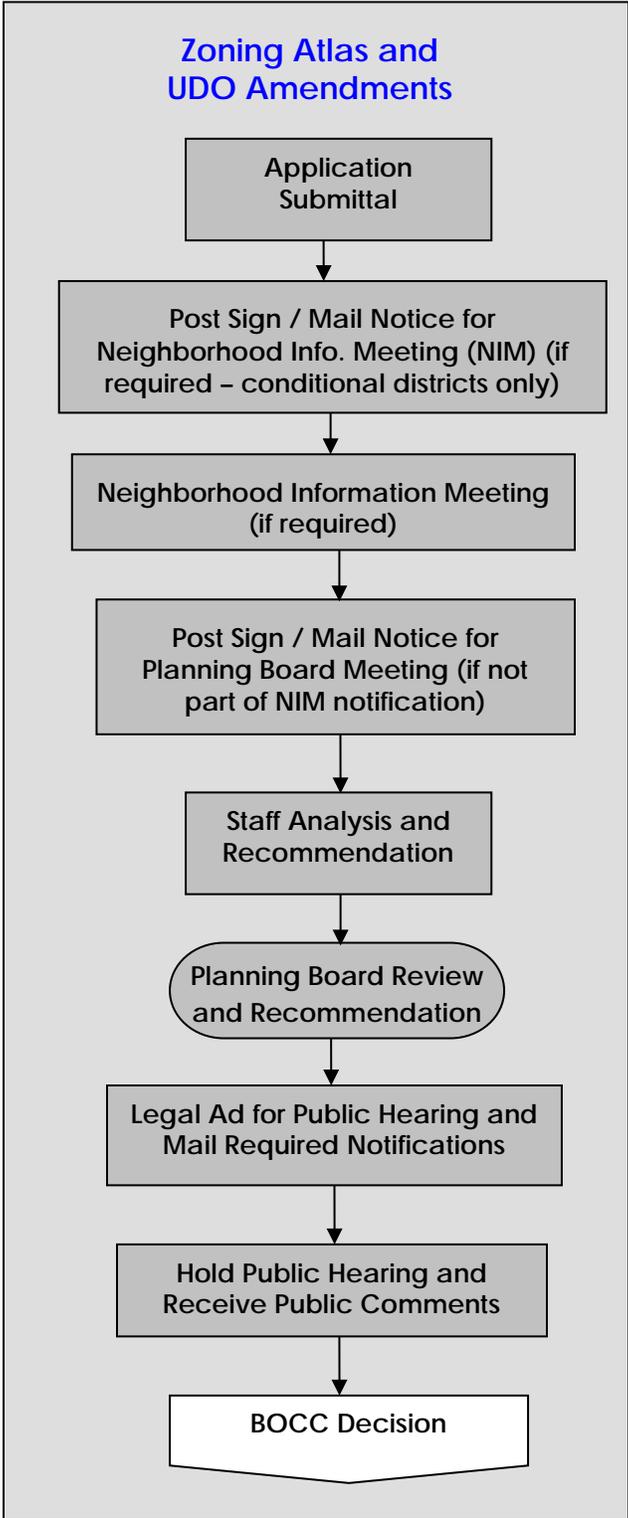


**2.8.3 Contents of Application**

Applications shall contain the following:

- (A) For amendments to the Zoning Atlas:
  - (1) A map at a legible scale showing the land which would be covered by the proposed amendment, and
  - (2) A legal description of the land.
- (B) For amendments to the Unified Development Ordinance text:
  - (1) A copy of the existing text provision(s) which the applicant proposes for amendment, and
  - (2) A written statement which describes in detail the changes the applicant proposes to make.
- (C) The alleged error in the Zoning Atlas and/or Unified Development Ordinance text that would be corrected by the proposed amendment with a detailed explanation of such error in the Zoning Atlas and/or Unified Development text and detailed reasons how the proposed amendment will correct the alleged error;
- (D) The changed or changing conditions, if any, in the area or in the County generally, which makes the proposed Zoning Atlas and/or Unified Development Ordinance text amendment reasonably necessary to promote the public health, safety and general welfare;
- (E) The manner in which the proposed Zoning Atlas and/or Unified Development Ordinance text amendment will carry out the intent and purpose of the adopted Comprehensive Plan or part thereof; and
- (F) A traffic impact study as required by Section 6.17.
- (G) For amendments to the Special Flood Hazard Area Overlay District, pertaining to a Letter of Map Amendment:
  - (1) An elevation certificate with either an MT-1, MT-2, or MT-EZ (forms available through FEMA), or
  - (2) A “No-Impact” analysis for a Letter of Map Revision.

Proposed flow chart for Section 2.8.3



- (H) All other circumstances, factors and reasons that the applicant offers in support of the proposed Zoning Atlas and/or Unified Development Ordinance text amendment.

#### **2.8.4 Applications for Amendment – Joint Planning Area**

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Applications for amendments to the Orange County Unified Development Ordinance and Zoning Atlas for the purpose of incorporating the provisions of the Chapel Hill Land Development Ordinance (and Zoning Maps) and/or the Carrboro Land Use Ordinance (and Zoning Maps) shall be processed as specified herein and as specified in the Joint Planning Agreement adopted November 2, 1987, and as amended from time to time.

Any text amendments adopted by Orange County shall be adopted by reference as though fully set forth herein. Any map amendments adopted by Orange County shall be officially denoted on the County Zoning Atlas. Where there is inconsistency between the amendment procedures contained herein and those contained in the Joint Planning Agreement, the provisions of the Joint Planning Agreement shall apply.

#### **2.8.5 Review, Analysis and Recommendation**

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- (A) The Planning Director shall cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners.
- (B) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County's Agricultural Preservation Board for review and comment.
- (1) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
- (2) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.

#### **2.8.6 Public Hearing Required**

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- (A) A public hearing shall be held before adoption of any proposed Zoning Atlas Amendment and/or text amendment to this Ordinance. The Board of County Commissioners ~~and the Planning Board~~<sup>11</sup> shall hear applications and receive public comment for Zoning Atlas amendments and/or text amendments to this Ordinance in a Quarterly Public Hearing.
- (B) ~~The public hearing is legislative in nature and the hearing shall normally be closed at the conclusion of the hearing. Closure of a legislative hearing does not bar discussion of an application outside of the public hearing setting.~~
- (C) ~~A quorum of Planning Board members shall not be necessary to conduct the public hearing.~~

#### **2.8.7 Notice of Public Hearings**

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- (A) Notice of the public hearing to review the application and receive public comment shall be published at least twice in a newspaper of general circulation in the county, stating the time and place of the hearing and the substance of the proposed amendment.
- (B) Said notice shall appear in said newspaper for two successive weeks with the first notice appearing not less than ten days nor more than 25 days before the date set for the public

<sup>11</sup> Since a quorum of Planning Board members will no longer be necessary to hold a public hearing, the public hearing would no longer be a joint hearing.

hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

- (C) In the case of amendments to the zoning atlas, the Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.
- (D) In the case of amendments to the Zoning Atlas, written notice shall be sent by certified mail to the affected property owner and all adjacent property owners at least 15 days, but not more than 25 days, before the public hearing date. Adjacent property owners are those whose names and addresses are currently listed in the Orange County tax records and whose property lies within 500 feet of the affected property.
- (E) If amendments to the Zoning Atlas are proposed by the County, notice shall be sent by first class mail to all affected property owners and to all adjacent property owners within 500 feet as provided in (D) above.
- (F) The Planning Director shall certify the mailing of all notices to the Board of County Commissioners.

### 2.8.8 Planning Board Review<sup>12</sup>

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- ~~(A) Following the public hearing, all proposed amendments shall be referred to the Planning Board for consideration and recommendation.~~
- ~~(B) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within three regularly scheduled Planning Board meetings.~~
- ~~(C) If the Planning Board fails to make a recommendation within the time allotted in subsection (B) above, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.~~
- ~~(D) Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.~~
- ~~(E) Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.~~
- (A) All proposed amendments shall be referred to the Planning Board for consideration and recommendation prior to the public hearing, in accordance with review/meeting calendars published each calendar year. The Planning Board shall be allotted a minimum of 30 calendar days to make its recommendation.<sup>13</sup>

<sup>12</sup> These proposed revisions incorporate the discussion the Planning Board had in October, November, and December 2014 and which the BOCC discussed on May 12, 2015. The cadence of the review process would be revised to have the Planning Board make its recommendation prior to the public hearing. Notices would be mailed to nearby property owners and a sign(s) would be posted; this revision will notify nearby property owners of potential changes much earlier in the process. Although the Planning Board meeting would not be an official public hearing, interested persons could address the Planning Board (the existing requirement for written comments only is not proposed to continue in this revised process) and the Planning Board can take all public comments into consideration when making its recommendation.

<sup>13</sup> NCGS §153A-344 states that: Subsequent to initial adoption of a zoning ordinance, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the board of county commissioners may proceed in its consideration of the amendment without the planning board report. The board of commissioners is not bound by the recommendations, if any, of the planning board.

- (B) Interested persons may address the Planning Board at the Planning Board's meeting and public comments may be taken into consideration by the Planning Board in making its recommendation.
- (C) The Planning Board's action on an application shall be one of the following:
  - (1) Make no recommendation,
  - (2) Recommend approval,
  - (3) Recommend denial,
  - (4) Recommend approval but with specified changes, or
  - (5) Make a preliminary recommendation, of either (1) through (4) above, with a request to the Board of County Commissioners that if significant new information is presented at the public hearing, the Board of County Commissioners refer an application back to the Planning Board for further review and a potential new recommendation.
    - (a) The Board of County Commissioners is not bound to referring an application back to the Planning Board.

### **2.8.9 Action by Board of County Commissioners**

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- (A) The Board of County Commissioners shall not consider enactment of ~~the a~~ proposed amendment until the Planning Board either makes its recommendation or takes no action on the application as prescribed in Section 2.8.8(C).
- ~~(B) In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.~~
- (C) The Board of County Commissioners shall not consider enactment of a proposed amendment until after the required public hearing has been held. At the conclusion of the public hearing, the Board of County Commissioners may do one of the following:
  - (1) Continue the public hearing to a date/time certain,
  - (2) Close the public hearing and refer the application back to the Planning Board for further review,
  - (3) Close the public hearing and defer a decision to a later Board of County Commissioners meeting date, or
  - (4) Close the public hearing and make a decision.
- (D) In making its decision, the Board of Commissioners shall consider comments made at the public hearing, the Planning Board's recommendation, and the Planning Director's recommendation.
- (E) The Board of County Commissioners is not bound by comments and recommendations and may make a decision different from comments and/or recommendations it receives.

### **2.8.10 ~~Text Revisions Pertaining to Soil Erosion and Sedimentation Control Provisions~~**

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- ~~(A) The Erosion Control Officer shall review all of the North Carolina Sedimentation Control Commission's revisions to the State's Model Soil Erosions and Sedimentation Control Ordinance and, within 90 days of receipt of the recommended revisions, submit draft amendments to the North Carolina Sedimentation Control Commission for its consideration and comments.~~
- ~~(B) Within 150 days after receipt of the North Carolina Sedimentation Control Commission's comments, Orange County shall formally consider proposed amendments and, to the extent deemed necessary by the Board of County Commissioners, incorporate the amendments into this Ordinance.~~

#### 2.11.4 Review Procedures

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- (A) Applications for an appeal of an interpretation shall be reviewed and acted upon by the Board of Adjustment in accordance with the procedures contained in Section 2.12 of this Ordinance.
- (B) The conduct of the hearing shall be consistent with the provisions of Section 2.12 of this Ordinance.
- (C) The Planning Director shall complete an assessment of the application and provide a recommendation on the disposition of the application. The assessment shall include all relevant facts utilized in rendering the disputed decision and the rationale for the interpretation made by the Planning Director.
- (D) The assessment shall be introduced at the hearing and become part of the record.
- (E) Upon hearing all evidence associated with the application, the Board of Adjustment shall close the hearing and render a decision on the matter to affirm, modify, or reverse the decision of the Planning Director.

#### 2.11.5 Findings of Fact

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The Board of Adjustment shall provide a detailed rationale for its decision in the form of an order to affirm, modify, or reverse the decision of the Planning Director. This order shall provide the necessary justification for the Board's action based on the testimony and evidence entered into the record during the hearing.

#### 2.11.6 Notice Requirements

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Notice requirements shall follow Section 2.12.6(A). Other subsections of Section ~~2.2.6~~ 2.12.6<sup>14</sup> are not applicable to applications for an appeal of an interpretation.

### SECTION 2.12: BOARD OF ADJUSTMENT

#### 2.12.1 General Provisions

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- (A) The Board shall act on all applications before it.
- (B) The Board shall act on any appeal of a Stop Work Order issued by the Planning Director at its next regularly scheduled meeting or at a special meeting called for that purpose.

#### 2.12.2 Quasi-Judicial Proceedings

---

- (A) The Board of Adjustment acts in a quasi-judicial capacity. However, it is not intended that its proceedings be conducted as formally as those before courts.
- (B) The rules of procedure and evidence set forth in this Ordinance shall be followed to protect the interests of all parties and the public.
- (C) The presiding officer shall administer oaths to all witnesses and shall make rulings necessary to preserve fairness, order, or proper decorum in any matter before the Board of Adjustment. Any person who, while under oath during a proceeding before the Board, willfully swears falsely is guilty of a Class I misdemeanor.
- (D) Any member of the Board of Adjustment or any interested party may object to, and the presiding officer may exclude, any evidence, testimony, or statement that is deemed incompetent, irrelevant, immaterial, or unduly repetitious and therefore fails to reasonably address the issues before the Board of Adjustment.

#### 2.12.3 Evidence and Testimony

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- (A) Interested Party

<sup>14</sup> Typographical error that staff recommends correcting as part of this amendment package.

There are no proposed changes in this page. It is provided for context.

(f) The applicant shall submit proof of liability insurance covering bodily injury and property damage demonstrating a minimum coverage limit of \$ 500,000.00 per occurrence.

(g) A Type D Land Use Buffer shall be provided along any portion of the perimeter of the parcel, easement, or leasehold area located adjacent to property zoned, or otherwise utilized for, residential use except where such property is owned, leased or consists of other utility easements currently used for electrical distribution or transmission purposes.

Existing vegetation may be used to satisfy the landscaping requirements.

**(3) Decommissioning**

The applicant agrees to the following as conditions in case the utility is to be abandoned:

(a) The owner/operator of the facility is required to notify the Orange County Planning Director in writing 60 days prior to planned the cessation or abandonment of the facility for any reason. This notice shall provide the exact date when the use of the facility will cease.

(b) Documentation shall be provided indicating that the public utility purchasing the power has been made aware of the decision.

(c) The facility shall be removed within 12 months from the date the applicant ceases use of the facility.

(d) Once the infrastructure is removed the property, the owner shall obtain the necessary Erosion Control permits to re-stabilize the property. The time frame for completion shall be determined by the Orange County Erosion Control Officer.

(e) The owner shall provide financial security in form and amount acceptable to the County to secure the expense of dismantling and removing said structures.

(f) Upon removal of the facility, the Department shall cause a notice to be recorded within the Orange County Registrar of Deeds office indicating that the Class A Special Use Permit has been revoked.

## SECTION 5.10: STANDARDS FOR TELECOMMUNICATION FACILITIES

### 5.10.1 Intent

The regulations contained herein are designed to provide for the safe and efficient integration of facilities necessary for the provision of advanced wireless telecommunications services through the community with the goal of establishing reliable wireless service to the public, governmental agencies, and first responders in a manner that provides for the public safety and general welfare of its citizens.

### 5.10.2 Master Telecommunications Plan ("Plan")

(A) The Plan is intended to assist providers in their search for suitable locations to build their service network. The County may develop the Plan (map), which would display locations within the County's zoning jurisdiction where property owners have expressed formal, written, interest in allowing construction of telecommunications equipment.

(B) Information that may be shown on the base Plan will include, but not limited to:

- (1) Existing towers,
- (2) Major transmission lines,
- (3) County-defined Natural Areas,

- (4) Historic properties,
  - (5) Scenic corridors,
  - (6) Known bird migratory patterns through the County,
  - (7) Voluntary Agricultural Districts, and
  - (8) Publicly-owned or quasi-public lands.
- (C) In order to participate in the Plan, all owner(s), or their legally binding representatives, shall submit an application on a form prepared by the Planning Department requesting inclusion.
- (D) All telecommunication providers who elect to construct facilities on properties in the Plan shall provide all necessary and requested information to the County's telecommunications consultant.
- (E) Modification of the Plan may be considered annually at the **February first** Quarterly Public Hearing **of the calendar year, normally held in February**. Any applicant requesting modification of the Plan shall make application to the Planning Director on or before December 1st of each year. The fee for modifying the Plan shall be that as set forth in the Orange County Schedule of Fees.
- (F) Withdrawal from the Plan is permitted if any owner submits, to the Planning Director, a notarized statement requesting same. Upon receipt of the request, including any fee for modifying the Plan as set forth in the Orange County Schedule of Fees, the Planning Director shall inform interested parties that the property has been withdrawn from consideration. Removal of the property from the Plan shall be processed as a modification as detailed herein.

### **5.10.3 Annual Telecommunications Projection Meeting (ATPM)**

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**(A) Purpose and Outcome**

- (1) The purpose of the ATPM meeting is to allow for a complete review of collocation opportunities, address coverage issues, and discuss the location of needed telecommunication support structures with providers who intent on submitting development applications for action by the County. The intended outcome of the meeting is to allow the County and interested parties to develop a plan for facility deployment within the County that provides reasonable coverage based on the needs of the County and its residents, while minimizing the total number of needed telecommunication support facilities, including minimizing the intrusiveness of such facilities, and encouraging the development of a more efficient telecommunication network.
- (2) The intended outcome of the meeting is an understanding amongst the Planning Director and providers on areas of the County where telecommunication support facilities are needed and application request for the year should be focused.

**(B) Applicability**

- (1) By December 31<sup>st</sup> of each calendar year, telecommunication providers shall submit to the Planning Director a plan indicating proposed search rings for anticipated telecommunication support structures. This plan shall identify areas where providers are looking to locate facilities, as well as identify those areas of the County that are underserved by existing facilities.
- (2) As of the effective date of this Ordinance amendment any pending applications that have not received a zoning compliance permit or a special use permit shall meet all requirements of this Ordinance, including, but not limited to submission deadlines, application standards and processing, excluding the ATPM requirement.

**(C) Meeting Specifics**

**Amendment Package to Revise the Existing Public Hearing Process**  
**(Option B – Planning Board Review/Recommendation After Public Hearing)**

Notes

The pages that follow contain the amendments necessary to the Unified Development Ordinance (UDO) text to revise the existing public hearing process for Comprehensive Plan- and Unified Development Ordinance-related hearing items. This option would retain the existing cadence of having the Planning Board make its recommendation after the public hearing.

Proposed additions/changes to existing UDO text are depicted in **red**. Some of the proposed changes utilize footnotes to provide a brief explanation as to rationale. Users are reminded that these excerpts are part of a much larger document (the UDO) that regulates land use and development in Orange County. The full UDO is available online at: <http://orangecountync.gov/planning/Ordinances.asp>

Please note that the page numbers in this amendment packet may or may not necessarily correspond to the page numbers in the adopted UDO because adding text may shift all of the text/sections downward.

Some text on the following pages has a large “X” through it to denote that these sections are not part of the amendments under consideration. The text is shown only because in the full UDO it is on the same page as text proposed for amendment. Text with a large “X” is not proposed for deletion; proposed deletions are shown in **red-strikethrough** text.

- (C) Each Township within the County shall be represented in the membership of the Board by at least one resident.
- (D) The Board of County Commissioners may by resolution establish rules related to the requirements for volunteer service on the Planning Board, appointment and removal of Planning Board members, and rules of procedure.
- (E) In establishing the Planning Board and its program, the Board of Commissioners intends that the Planning Board be guided by the following principle:
  - (1) The Comprehensive Plan, and any ordinances or other measures to effectuate it, shall be made with the general purpose of guiding and accomplishing a coordinated, and harmonious development of the County which will, in accordance with present and future needs, best promote health, safety and the general welfare, as well as efficiency in the process of development; including, among other things, adequate provisions for traffic, the promotion of safety from fire and other dangers, adequate provision for light and air, the promotion of the healthful and convenient distribution of populations, the promotion of good civic design, wise and efficient expenditure of public funds, and adequate provision of public utilities, services, and other public requirements, and conservation of significant natural and man-made resources within the County.

### 1.6.2 Tenure and Membership Expectations

---

- (A) The tenure of office shall be three years. Members are eligible for reappointment for a second consecutive full term. After two consecutive terms a member shall be ineligible for reappointment for one year after the expiration of the previous terms.
- (B) Appointments shall be made so that one-third of the terms expire in March of each calendar year.
- (C) Appointments made to fill vacancies shall be for the unexpired term and shall not be counted as a term in determining eligibility for reappointment.
- (D) A member whose term has expired shall continue to serve on the Board until his/her respective successor has been appointed.
- (E) Attendance at the regular meetings of the Board **and at quarterly public hearings<sup>1</sup>** shall be considered a prerequisite for maintenance of membership on the Planning Board. The Board of County Commissioners may declare a vacancy on the Planning Board because of a member's non-attendance, in accordance with the Planning Board Rules of Procedure.
- (F) Absence due to sickness, death of an immediate family member or similar reason shall be considered approved absences and shall not affect the member's status. In the event of long illness or other cause for prolonged absence, the member shall be replaced.
- (G) The Board of County Commissioners may by resolution establish rules related to tenure and membership expectations. If the terms of such resolution, or policy created thereby, conflict with the terms of this section 1.6.1 or 1.6.2 the terms of the resolution or policy shall control.

### 1.6.3 Duties

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As provided for in 153A-321 of the General Statutes of North Carolina, as amended, the Planning Board shall have the following general Powers and Duties:

- (A) Make studies of Orange County and surrounding areas;
- (B) Determine objectives to be sought in the development of Orange County;
- (C) Propose and recommend plans for achieving these objectives;

<sup>1</sup> Proposed addition to clarify that Planning Board members are expected to attend the quarterly public hearings.

## ARTICLE 2: PROCEDURES

### SECTION 2.1: REVIEW AND DECISION MAKING AUTHORITY – SUMMARY TABLE

The following table provides a brief synopsis of the review and decision-making processes for development applications.

TABLE 2.1: REVIEW AND DECISION MAKING AUTHORITIES						
R=REVIEW DM=DECISION MAKER PH=PUBLIC HEARING						
ZONING/DEVELOPMENT REVIEW RELATED PROCEDURES	PLANNING DIRECTOR	EROSION CONTROL OFFICER	DEVELOPMENT ADVISORY COMMITTEE (DAC)	BOARD OF ADJUSTMENT	PLANNING BOARD	BOCC
Zoning Compliance Permits	R and DM	R	R			
Soil Erosion and Sedimentation Control Permits		R and DM				
Stormwater Management Plans		R and DM				
UDO Text Amendments	R		R		R [1]	DM and PH
Zoning Atlas Amendments	R		R		R [1]	DM and PH
Special Use Permits	R	R	R	DM and PH Class B	R [1] Class A	DM and PH Class A
Zoning Variances	R		R	DM and PH		
Conditional Use	R	R	R		R [1]	DM and PH
Appeals/Interpretations	R		R	DM and PH		
Comprehensive Plan Amendments	R				R [1]	DM and PH
Subdivision Related Procedures						
Exempt	R and DM					
Minor	R and DM	R	R			
Major	R	R	R		R and DM [2]	R and DM
Conditional Use	R	R	R		R [1]	R, DM, and PH
Appeal						
NOTES						
[1]	The Planning Board attends <del>a Joint Public Hearing with the public hearing held by</del> the BOCC to review all zoning related items requiring a public hearing. The Planning Board will have the item referred to it and shall have up to <del>90</del> 60 <sup>2</sup> days to comment on the application.					
[2]	The Planning Board approves the Concept Plan for a Major Subdivision and then makes a recommendation on the Preliminary Plat to the BOCC.					

<sup>2</sup> Staff is suggesting a shorter potential review period. In recent years, the BOCC has instructed the Planning Board to return its recommendation by a date/time certain due to the case law requirement that public hearings be adjourned to a date/time certain. Since the public hearing is now proposed to be closed the night of the hearing and the requirement for only written comments after the public hearing is proposed for removal, the Planning Board will need to know that recommendations must be made within 60 days.

**2.2.8 Effect of Denial on Subsequent Applications**

- (A) If the Board of County Commissioners denies an application, or the application is withdrawn subsequent to notice of the public hearing thereon, no application for the same or similar amendment, affecting the same property or a portion of it, may be submitted for a period of one year. Said one year period begins on the date of denial or withdrawal, as appropriate.

**SECTION 2.3: COMPREHENSIVE PLAN AMENDMENTS**

**2.3.1 Review and Approval Flow Chart**

The review and approval process for Comprehensive Plan Amendments is shown in the procedure's flowchart.

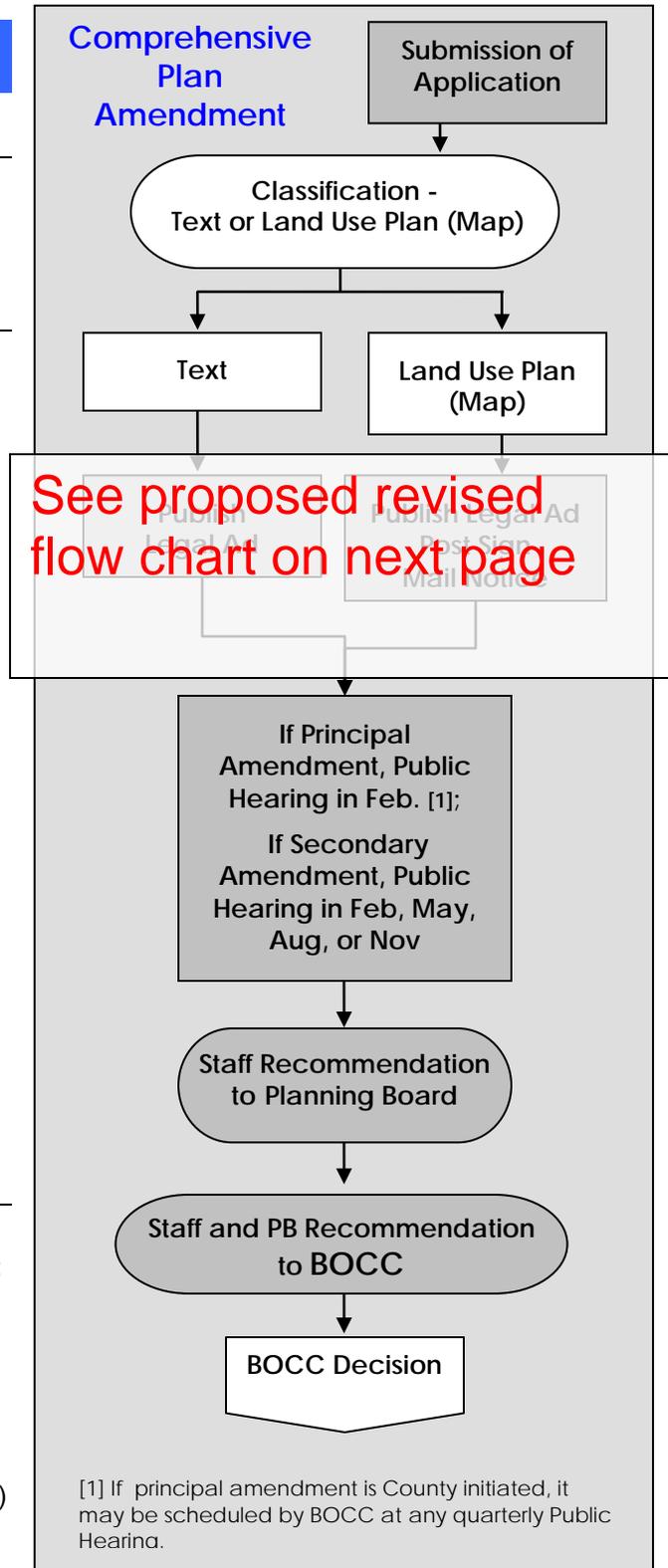
**2.3.2 Generally**

- (A) The Comprehensive Plan shall be so prepared that all or individual elements and parts thereof may be adopted and/or amended by the Board of Commissioners.
- (B) For the purpose of establishing and maintaining sound, stable, and desirable development within Orange County, the Comprehensive Plan or portion thereof shall not be amended except as follows:
  - (1) Because of changed or changing conditions in a particular area or areas of the County;
  - (2) To correct an error or omission; or
  - (3) In response to a change in the policies, objectives, principles or standards governing the physical development of the County.

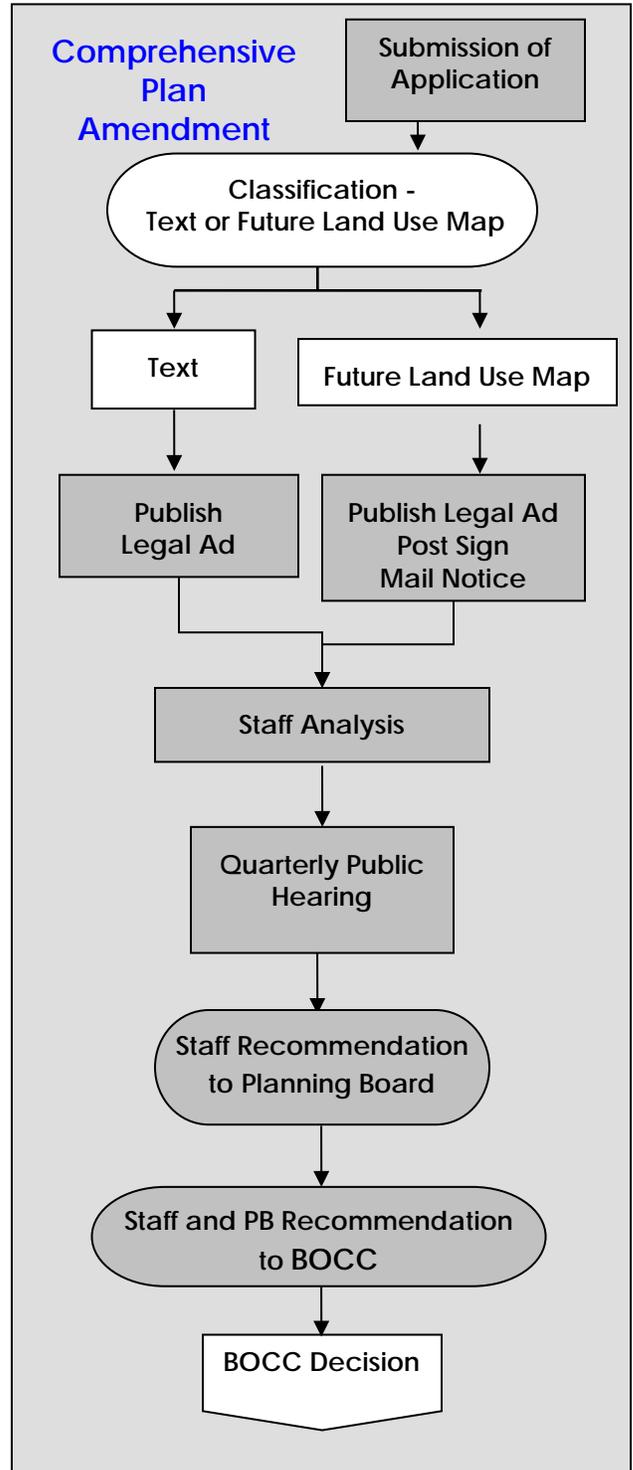
**2.3.3 Initiation of Amendments**

An amendment to the Comprehensive Plan or portion thereof may be initiated by:

- (A) The Board of Commissioners on its own motion;
- (B) The Planning Board;
- (C) Application, by any person or agency, which accurately and completely sets forth the reason(s) for the proposed amendment as



Proposed flow chart for Section 2.3.1



prescribed in Section 2.3.2(B); or

- (D) The Planning Director.

### 2.3.4 Classification of Amendments<sup>3</sup>

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Amendments to the Comprehensive Plan or portion thereof are classified as "principal" or "secondary" amendments.

Staff proposes this entire section for deletion (see footnote below)

**(A) Principal Amendments Include**

- (1) Additions to or modifications of policies, objectives, principles or standards;
- (2) The creation of new activity nodes or additions to existing activity nodes which exceed ten acres in land area; or
- (3) Proposals for new freestanding plan areas or additions to existing areas that exceed 100 acres in land area.

**(B) Secondary Amendments Include**

- (1) The expansion of an activity node where the additional area is contiguous to an existing node and does not increase its land area by more than ten acres;
- (2) The expansion of a designated plan area where the additional area is contiguous to the existing plan designation and does not increase its land area by more than 100 acres;
- (3) A correction of an error or omission; or
- (4) Revisions to any factual or descriptive material.

### 2.3.5 Public Hearing Required

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- (A)** A public hearing shall be held before adoption of any proposed Comprehensive Plan amendment. The Board of County Commissioners ~~and the Planning Board~~<sup>4</sup> shall hear applications and receive public comment for proposed Comprehensive Plan amendments in a Quarterly Public Hearing.
- (B)** ~~The public hearing is legislative in nature and the hearing shall normally be closed at the conclusion of the hearing. Closure of a legislative hearing does not bar discussion of an application outside of the public hearing setting.~~
- (C)** ~~A quorum of Planning Board members shall not be necessary to conduct the public hearing.~~

### 2.3.6 Notice Requirements for Public Hearings

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- (A)** Notice of the public hearing shall be given by publishing said notice at least twice in a newspaper of general circulation in the County, stating the time and place of such hearing and the substance of the proposed amendment.
- (B)** This notice shall appear in said newspaper for two consecutive weeks with the first notice appearing not less than ten days nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.

<sup>3</sup> Staff proposes that this entire section (2.3.4) be deleted because it is relevant only in conjunction with Section 2.3.7. Rather than limiting "principal" amendments to being heard "generally" only once per year, staff proposes that any Comprehensive Plan amendment could be heard at any of the quarterly public hearings. If this Section is deleted, subsequent sections would be renumbered and section reference updates might occur in other sections/articles of the UDO.

<sup>4</sup> Since a quorum of Planning Board members will no longer be necessary to hold a public hearing, the public hearing would no longer be a joint hearing.

- (C) The minimum published size of the notice shall be 25 square inches.
- (D) In the case of amendments to the ~~Land Use Plan (map)~~ Future Land Use Map<sup>5</sup>, the Planning Director shall prominently post a notice of the public hearing on the site proposed for the land use ~~classification~~ change or on an adjacent public street or highway right of way not less than ten days before the date set for the public hearing.
  - (1) When multiple parcels are included within a proposed ~~Land Use Plan (map)~~ Future Land Use Map amendment, a posting on each individual parcel is not required, but the county shall post sufficient notices to provide reasonable notice to interested persons.
- (E) In the case of amendments to the ~~Land Use Plan (map)~~ Future Land Use Map, written notice of the public hearing shall be sent by first-class mail to all property owners, as listed in the Orange County tax records, whose property is affected (property that is included in the proposed ~~land-use-plan~~ Future Land Use Map amendment) and all property owners within 500 feet. Said notice shall be mailed at least 14 days, but not more than 25 days, prior to the date of the public hearing.

### 2.3.7 Consideration of Amendments<sup>6</sup>

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- (A) Principal amendments shall generally ~~only~~ be considered ~~only~~ once each year at the first quarterly public hearing ~~in February of the calendar year, usually held in February~~<sup>7</sup>.
- (B) If a principal amendment is scheduled ~~by the Board of County Commissioners~~<sup>8</sup> for other than the ~~February first~~ quarterly public hearing of the calendar year, it shall be scheduled during one of the quarterly public hearings held ~~in May, August, and November~~ later in the year.
- (C) Secondary amendments may be considered four times each year at ~~the a~~ quarterly ~~joint~~ public hearings ~~in February, May, August, and November~~ as designated each year on the Board of County Commissioners meeting calendar.
- (D) A proposed amendment may be considered in conjunction with a rezoning request for the same property if the requests are in compliance with an adopted small area plan.
- (E) Requests for a rezoning not in compliance with an adopted small area plan, conditional use district, and/or special use permit may only be considered at subsequent hearings or meetings following approval of the proposed amendment to the Comprehensive Plan.

Staff proposes A, B, and C for deletion (see footnote)

### 2.3.8 Application Requirements

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- (A) **Generally**
  - (1) All applications for amendments to the Comprehensive Plan shall be submitted on forms supplied by the Planning Department and shall be signed.
  - (2) Three copies of the application shall be submitted to the Planning Director.

<sup>5</sup> The name of this map was changed in the Comprehensive Plan in 2012 and should be updated here.

<sup>6</sup> Staff proposes that (A), (B), and (C) of this section be deleted because staff believes that any proposed amendment to the Comprehensive Plan should be able to be heard at any of the quarterly public hearings. Allowing principal amendments "generally" only once per year imposes constraints. If there is not interest in allowing consideration of any amendment at any of the four QPHs per year, then the language should be modified as shown.

<sup>7</sup> Staff is suggesting the language be less constrictive in case the BOCC wants to move quarterly public hearing dates in the future when the annual BOCC meeting calendar is created in the fall of each year. For example, this was done for the public hearing that was formerly held in August of each year but is now held in September.

<sup>8</sup> The BOCC does not schedule amendments (staff is responsible for doing so) but if a principal amendment were proposed for a QPH other than the first hearing of the year, staff would coordinate with the Manager and Chair/Vice-Chair to gain input into whether the application should be allowed to be heard at one of the three later QPHs.

- (3) Before accepting any amendment application, the Planning Director shall ensure that it contains all required information, as specified in this Ordinance. Applications which are not complete, or otherwise do not comply with the provisions of this Ordinance, shall not be accepted by the Planning Director, but shall be returned to the applicant, with a notation by the Planning Director of the deficiencies in the application.

**(B) Contents of Application**

Applications for amendments to the Comprehensive Plan, without limiting the right to file additional material, shall contain at least the following:

- (1) For amendments to the ~~Land Use Plan (map)~~ **Future Land Use Map** within the Land Use Element, a map at a legible scale adequately illustrating the land which would be covered by the proposed map amendment, and a complete list of Property Identification Numbers (PIN) for the properties;
- (2) For amendments to the Comprehensive Plan text, a copy of the existing text provision(s) which the applicant proposes for amendment, and a written statement which describes in detail changes which the applicant proposes to make to the text of the Comprehensive Plan and the rationale for the proposed amendment consistent with the standards established in this Ordinance; and
- (3) All other circumstances, factors and reasons which the applicant offers in support of the proposed Comprehensive Plan amendment.

**2.3.9 Analysis and Recommendation**

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The Planning Director shall cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners.

**2.3.10 Planning Board Review**

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- (A) Following the public hearing, all proposed amendments shall be referred to the Planning Board for consideration and recommendation.
- (B) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within ~~three regularly scheduled Planning Board meetings~~ **60 calendar days**<sup>9</sup> unless the Board of County Commissioners grants an extension.
- (C) If the Planning Board fails to make a recommendation within the time allotted in subsection (B), the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.
- (D) ~~Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.~~<sup>10</sup>
- (E) ~~Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of~~

<sup>9</sup> Staff is suggesting a shorter potential review period. In recent years, the BOCC has instructed the Planning Board to return its recommendation by a date/time certain due to the case law requirement that public hearings be adjourned to a date/time certain. Since the public hearing is now proposed to be closed the night of the hearing and the requirement for only written comments after the public hearing is proposed for removal, the Planning Board will need to know that recommendations must be made within 60 days.

<sup>10</sup> Staff is suggesting that amendments initiated by the County have the same review time as applications submitted by others.

~~County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.<sup>11</sup>~~

- ~~(F) Interested persons may address the Planning Board at the Planning Board's meeting and public comments may be taken into consideration by the Planning Board in making its recommendation.~~
- ~~(G) The Planning Board's action on an application shall be one of the following:
 
  - ~~(1) Make no recommendation,~~
  - ~~(2) Recommend approval,~~
  - ~~(3) Recommend denial, or~~
  - ~~(4) Recommend approval but with specified changes.~~~~

### **2.3.11 Action by Board of County Commissioners**

- ~~(A) The Board of County Commissioners shall not consider enactment of ~~the~~ a proposed amendment until the Planning Board either makes its recommendation or takes no action on the application as prescribed in ~~this section~~ Section 2.3.10.~~
- ~~(B) In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.~~
- ~~(C) The Board of Commissioners, upon receipt of a recommended Comprehensive Plan or portion thereof from the Planning Board, shall consider such recommendations and adopt them by resolution, either unchanged or with modifications.~~
- ~~(D) In making its decision, the Board of Commissioners shall consider comments made at the public hearing, the Planning Board's recommendation, and the Planning Director's recommendation.~~
- ~~(E) The Board of County Commissioners is not bound by comments and recommendations and may make a decision different from comments and/or recommendations it receives.~~
- ~~(F) Decisions shall normally be adopted by resolution except in cases where comprehensive plan amendments are also included with Unified Development Ordinance amendments, the comprehensive plan amendments may be incorporated into the ordinance approving the other amendments.~~

## **SECTION 2.4: ZONING COMPLIANCE PERMITS**

### **2.4.1 Applicability**

- ~~(A) As required by this Ordinance, a Zoning Compliance Permit must be issued before any new site development, building, structure, or vehicular use area may be erected, constructed or used.~~
- ~~(B) Submittal and approval of a site plan (see Section 2.5) is required for issuance of a Zoning Compliance Permit except for:
 
  - ~~(1) Single-family detached dwellings and duplexes, and accessory structures to those residential uses shall require a plot plan as detailed within Section 2.4.3 of this Ordinance.~~

~~In those instances, however, where the proposed level of land disturbance exceeds established thresholds as detailed within Section 6.14.5 of the~~~~

<sup>11</sup> Staff is suggesting that oral comments on legislative items could be made at the Planning Board meeting and they would not also have to be submitted in writing. This will help alleviate the current awkward process of leaving the public hearing open in order to receive written comments which necessitates items being placed on the BOCC under the "public hearing" heading but with the note that no additional comments are accepted.

## SECTION 2.7: SPECIAL USE PERMITS

### 2.7.1 Generally

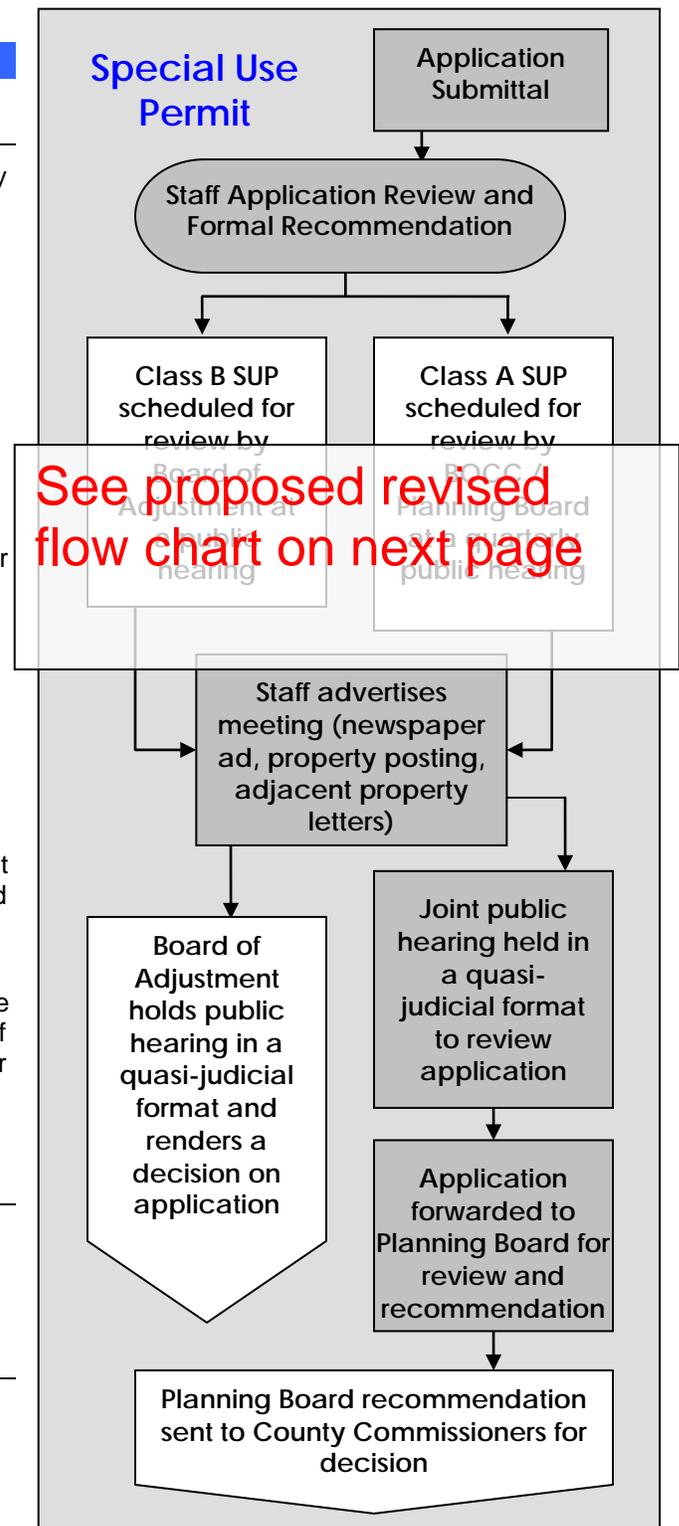
- (A) Any use or development designated by applicable zoning district regulations contained within Article 5 as a special use, or as allowed only pursuant to a special use permit (either Class A or Class B), may be established in that district only after the use or development is authorized by a validly issued and recorded special use permit.
- (B) This section sets forth required review and approval procedures for submittal, review, and approval of applications for special use permit.
- (C) A special use permit authorizes its holder to use or develop a particular parcel of land in a particular way, as specified by the terms and conditions of the special use permit.
- (D) A special use permit imposes on its holder the responsibility of ensuring that the authorized use or development continues to comply with the terms and conditions of approval.
- (E) Issuance of a special use permit does not relieve the holder of the special use permit of the additional responsibility of obtaining a building permit or any other permit or approval required by any other applicable law.

### 2.7.2 Review and Approval Flow Chart

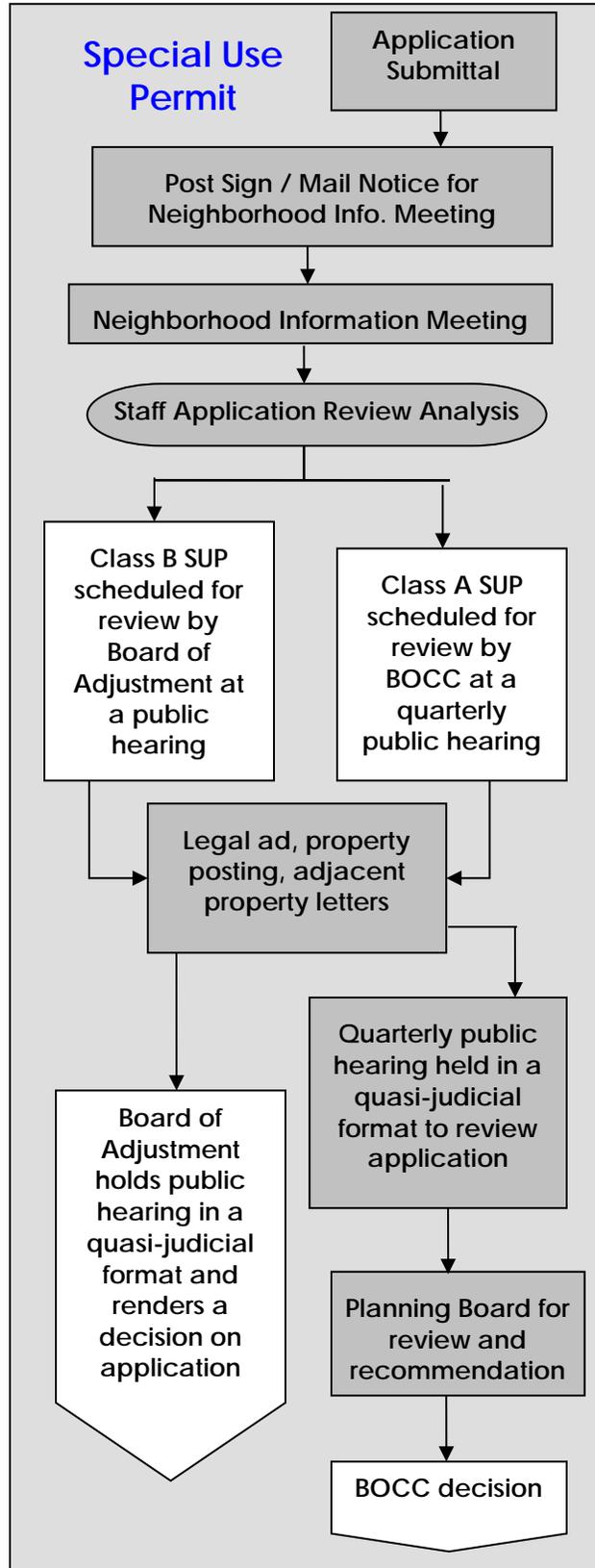
The review and approval process for Special Use Permits is shown in the procedure's flowchart.

### 2.7.3 Application Requirements

- (A) Applications for a Special Use shall be submitted on forms provided by the Planning Department in accordance with Section 2.2 of this Ordinance.
- (B) Applications shall include:
- (1) A full and accurate description of the proposed use, including its location, appearance, and operational characteristics.
  - (2) The name(s) and address(es) of the owner(s) of the property involved.
  - (3) Relevant information needed to show compliance with the general and specific standards governing the Special Use (See Articles 5 and 6).



Proposed flow chart for Section 2.7.1



There are no proposed changes in this page. It is provided for context.

- (4) For Class A Special Uses 26 copies of the site plan, and for Class B Special Uses 10 copies of the site plan, prepared by a registered North Carolina land surveyor, landscape architect, architect, or engineer, which shall contain the information listed in Section 2.5.
- (5) If the application involves a Preliminary Subdivision Plat, 26 copies of the Plat prepared in accordance with Section 7.14 shall be provided.
- (6) A list of all parcels located within 500 feet of the subject parcel and the name and address of each property owner, as currently listed in the Orange County tax records.
- (7) Elevations of all structures proposed to be used in the development.
- (8) For Class A Special Uses 26 copies and for Class B Special Uses 10 copies of the Environmental Assessment and/or Environmental Impact Statement, if required by Section 6.16.
- (9) Method of disposal of trees, limbs, stumps and construction debris associated with the permitted activity, which shall be by some method other than open burning.
- (10) Statement from the applicant indicating the anticipated development schedule for the build-out of the project.
- (11) Statement from the applicant in justification of any request for vesting for a period of more than two years (five years maximum).

#### **2.7.4 Staff Review**

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- (A) The Planning Director shall cause an analysis to be made of the application by qualified representatives of the County and other agencies or officials as appropriate.
  - (1) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County's Agricultural Preservation Board for review and comment.
    - (a) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
    - (b) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.
- (B) The Planning Director shall submit the analysis to the Board of County Commissioners and the Planning Board, in the case of Class A Special Uses, or the Board of Adjustment, in the case of Class B Special Uses.
- (C) The appropriate Board reviewing the application shall receive and enter the analysis into evidence during the public hearing. The analysis shall be subject to examination by all interested parties and the Planning Director shall be subject to cross-examination regarding the analysis.
- (D) The Planning Director shall not make a recommendation on the general findings detailed within Section 5.3 of this Ordinance

#### **2.7.5 Neighborhood Information Meeting**

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- (A) Before a Public Hearing may be held for a Special Use the applicant is required to schedule a minimum of one neighborhood information meeting. The purpose of the meeting is to obtain surrounding property owner input and comments on the proposed development project and allow staff an opportunity to explain the review process associated with the request.

There are no proposed changes in this page. It is provided for context.

- (B) The applicant shall obtain property owner mailing address information from the Orange County Planning Department, which shall utilize Orange County Land Records data, and shall mail certified notices of the meeting date and time to each property owner within 500 feet of the property for which a Special Use has been requested.
- (C) The applicant shall mail notice of the Neighborhood Information Meeting a minimum of 14 days prior to the date of the meeting.
- (D) The applicant shall post a sign on the property advertising the date, place, and time of the meeting a minimum of 10 days prior to the date of the meeting.
- (E) The meeting shall be held a minimum of 45 days prior to the date of the Public Hearing.
- (F) Neighborhood information meetings for telecommunication facilities shall be held in accordance with the provisions of Section 5.10.8 (B) (2).

**2.7.6 Notice Requirements for Class A Special Use Permits**

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- (A) The Planning Director shall give public notice of the date, time and place of the public hearing to be held to receive comments, testimony and exhibits pertaining to the application for a Special Use.
- (B) Such notice shall be published in a newspaper of general circulation in Orange County once a week for two successive weeks, with the first notice to be published not less than ten days nor more than 25 days prior to the date of the hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.
- (C) The Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.
- (D) Written notice shall be sent by certified mail to all adjacent property owners not less than 15 days before the hearing date. Adjacent property owners are those whose property lies within five hundred feet of the affected property and whose names and addresses are currently listed in the Orange County tax records.

**2.7.7 Notice Requirements for Class B Special Use Permits**

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Notice Requirements for Class B Special Use Permits shall follow the procedures in Section 2.12.6.

**2.7.8 Nature of Proceedings**

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- (A) The review of Special Use Permit applications shall be conducted during a public hearing by the decision-making board.
- (B) The review of a Special Use Permit application is a quasi-judicial process, where the Board responsible for rendering a decision acts much like a panel of judges. The Board hears factual evidence and sworn testimony presented at an evidentiary hearing, and then makes findings of fact supported by competent, substantial, and material evidence.
- (C) The chair or presiding officer of the hearing shall swear all parties intending to present evidence or testimony during the hearing.
- (D) The chair or presiding officer may take whatever action is necessary to limit testimony to the presentation of new factual evidence that is material to the application, to ensure fair and orderly proceedings, and to otherwise promote the efficient and effective gathering of evidence. Such actions may include:
  - (1) Barring the presentation of obvious hearsay evidence,
  - (2) Barring the presentation of non-expert opinion,
  - (3) Interrupting digressions into immaterial testimony,
  - (4) Interrupting repetitive testimony,

- (5) Reasonably limiting the time allotted each witness or cross-examination,
  - (6) Providing for the selection of spokespersons to represent groups of persons with common interests,
  - (7) Interrupting personal attacks, and/or
  - (8) Ordering an end to disorderly conduct.
- (E) Where the Board finds compliance with the general standards, specific rules governing the specific use, and that the use complies with all required regulations and standards, the application must be approved unless the Board shall also find, in some specific manner, that:
- (1) the use will not maintain or promote the public health, safety and general welfare, if located where proposed and developed and operated according to the plan as submitted.
- (F) Those opposing approval of the application on the grounds that the use will not promote the public health, safety and general welfare shall have the burden of establishing, by competent material and substantial evidence, the specific manner in which the proposed use does not satisfy the requirements for approval of the application for a Special Use.

### 2.7.9 Review and Decision

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- (A) For Class A Special Use permits, the following shall apply:
- (1) The Board of County Commissioners ~~and Planning Board~~ shall review the application during ~~a regularly scheduled public hearing one of the four quarterly public hearings that occur each calendar year.~~
    - (a) A quorum of Planning Board members shall not be necessary to conduct the public hearing.
    - (b) At the conclusion of the hearing, the hearing shall be closed unless the Board of Commissioners requests additional information in which case the hearing shall be adjourned to a date/time certain.
    - (c) The date/time certain shall be either a regularly scheduled Board of County Commissioners meeting or a future quarterly public hearing.<sup>12</sup>
  - (2) Following review at a public hearing, the Special Use permit application shall be referred to the Planning Board for its consideration and recommendation.
  - (3) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within ~~three regularly scheduled meetings~~ 60 calendar days.
  - (4) If the Planning Board fails to make a recommendation within the time allotted within subsection (3) above, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.

<sup>12</sup> (a) of this subsection is a change from the current process which allows information to be submitted in writing. Staff believes that having quasi-judicial evidence presented at a subsequent hearing is a better process for quasi-judicial items. Additionally, it will alleviate the awkward process of keeping a hearing open in order to receive any submitted written comments and placing those items on "public hearing" portion of the BOCC agenda but with a note that no additional comments are accepted. (b) of this subsection clarifies that the subsequent hearing can be either a regular meeting date or a future QPH. This decision would be made by the BOCC the night of the initial hearing and would depend on the complexity of additional information requested.

- (5) The Planning Board meeting is not quasi-judicial in nature and interested persons may address the Planning Board at the Planning Board's meeting. However, speakers shall be informed regarding the difference between hearsay and testimony and shall be told that hearsay cannot form the basis of a decision.
- (6) The Planning Board's shall make a general recommendation on the application but shall not make the findings required in Section 5.3.2(A). The Planning Board's action on an application shall be one of the following:
  - (a) Make no recommendation,
  - (b) Recommend approval,
  - (c) Recommend denial, or
  - (d) Recommend approval but with specified changes.
- (7) After receipt of any Planning Board recommendation and closure of the public hearing, the Board of County Commissioners shall take action upon the application. This action shall be one of the following:
  - (a) Approval;
  - (b) Approval with conditions; or
  - (c) Denial.
- (B) For Class B Special Use Permits, the following shall apply:
  - (1) The Board of Adjustment shall review the application during a regularly scheduled public hearing.
  - (2) The Board of Adjustment shall conduct the hearing in accordance within the provisions detailed in this Section as well as those contained within Section 2.12.
  - (3) After completion of the public hearing, the Board of Adjustment shall take action upon the application. This action shall be one of the following:
    - (a) Approval;
    - (b) Approval with conditions; or
    - (c) Denial.

#### **2.7.10 Standards of Evaluation**

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The following specific standards shall be used in deciding on an application:

- (A) The project meets all applicable design standards and other requirements of this Ordinance.
- (B) The development can reasonably be completed within the vesting period requested, if any.
- (C) Where vesting in excess of two years is requested, the project is located in an area where current issues under study do not involve potential amendments to the Comprehensive Plan and/or this Ordinance.

#### **2.7.11 Required Findings**

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- (A) A resolution or motion to approve the application must include the findings of fact and conclusions of law that support the decision. Any proposed conditions of approval must also be included in the resolution or motion to approve the application.
- (B) A resolution or motion to deny the application must state findings of fact and conclusions of law that support the decision.
- (C) If a resolution or motion to approve the application fails, the application is deemed denied. Those members voting against the resolution or motion must state which of the

### 2.8.3 Contents of Application

Applications shall contain the following:

- (A) For amendments to the Zoning Atlas:
- (1) A map at a legible scale showing the land which would be covered by the proposed amendment, and
  - (2) A legal description of the land.
- (B) For amendments to the Unified Development Ordinance text:
- (1) A copy of the existing text provision(s) which the applicant proposes for amendment, and
  - (2) A written statement which describes in detail the changes the applicant proposes to make.
- (C) The alleged error in the Zoning Atlas and/or Unified Development Ordinance text that would be corrected by the proposed amendment with a detailed explanation of such error in the Zoning Atlas and/or Unified Development text and detailed reasons how the proposed amendment will correct the alleged error;
- (D) The changed or changing conditions, if any, in the area or in the County generally, which makes the proposed Zoning Atlas and/or Unified Development Ordinance text amendment reasonably necessary to promote the public health, safety and general welfare;
- (E) The manner in which the proposed Zoning Atlas and/or Unified Development Ordinance text amendment will carry out the intent and purpose of the adopted Comprehensive Plan or part thereof; and
- (F) A traffic impact study as required by Section 6.17.
- (G) For amendments to the Special Flood Hazard Area Overlay District, pertaining to a Letter of Map Amendment:
- (1) An elevation certificate with either an MT-1, MT-2, or MT-EZ (forms available through FEMA), or
  - (2) A "No-Impact" analysis for a Letter of Map Revision.
- (H) All other circumstances, factors and reasons that the applicant offers in support of the proposed Zoning Atlas and/or Unified Development Ordinance text amendment.

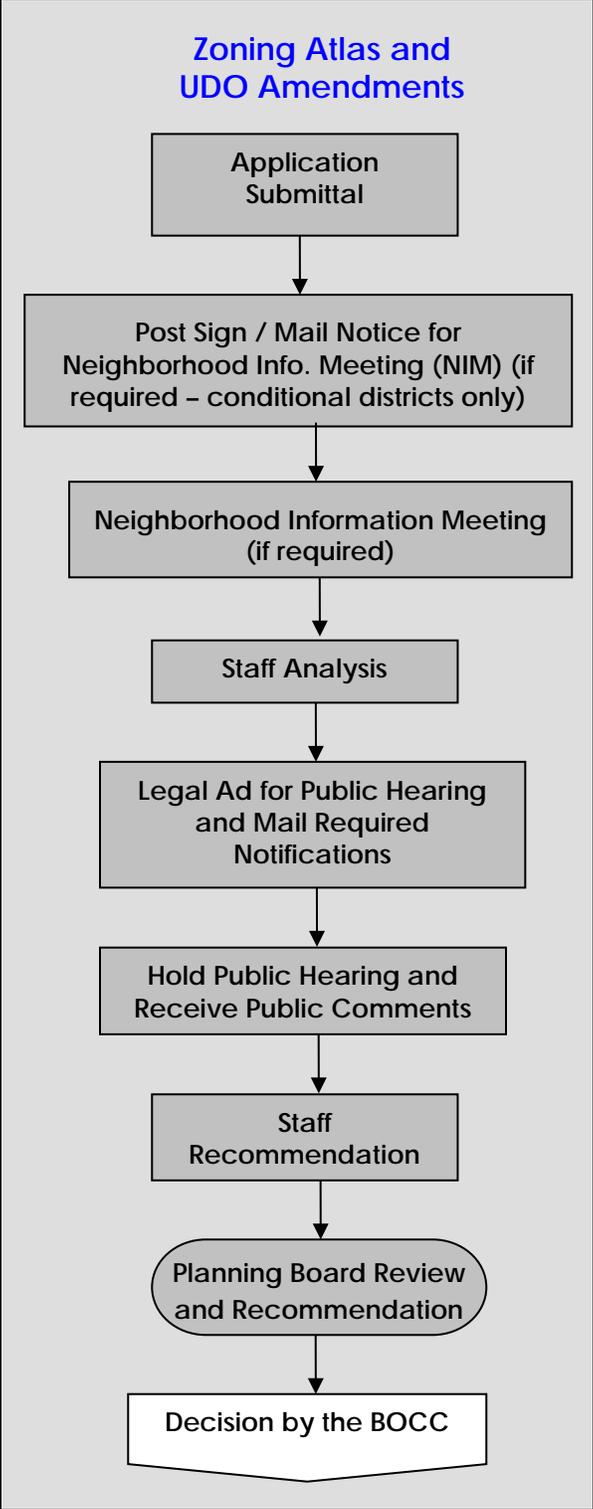


### 2.8.4 Applications for Amendment – Joint Planning Area

Applications for amendments to the Orange County Unified Development Ordinance and Zoning Atlas for the purpose of incorporating the provisions of the Chapel Hill Land Development Ordinance (and Zoning Maps) and/or the Carrboro Land Use Ordinance (and Zoning Maps) shall be processed as specified herein and as specified in the Joint Planning Agreement adopted November 2, 1987, and as amended from time to time.

Any text amendments adopted by Orange County shall be adopted by reference as though fully set forth herein. Any map amendments adopted by Orange County shall be officially denoted on the County Zoning Atlas. Where there is inconsistency between the amendment procedures contained herein and those contained in the Joint Planning Agreement, the provisions of the Joint Planning Agreement shall apply.

Proposed flow chart for Section 2.8.3



### 2.8.5 Review, Analysis and Recommendation

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- (A) The Planning Director shall cause an analysis to be made of the application and, based upon that analysis, prepare a recommendation for consideration by the Planning Board and the Board of County Commissioners.
- (B) Applications for agricultural support enterprise uses located within the Rural Buffer land use classification, as depicted on the Future Land Use Map of the adopted Comprehensive Plan, shall be forwarded to the County's Agricultural Preservation Board for review and comment.
  - (1) The Agricultural Preservation Board shall have 30 calendar days to provide comments. If comments are not received within this timeframe, the application review process shall not be delayed.
  - (2) For purposes of this subsection, agricultural support enterprise uses shall be defined as those permitted in the ASE-CZ zoning district, as detailed within Section 5.2.3 of this Ordinance.

### 2.8.6 Public Hearing Required

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- (A) A public hearing shall be held before adoption of any proposed Zoning Atlas Amendment and/or text amendment to this Ordinance. The Board of County Commissioners ~~and the Planning Board~~<sup>13</sup> shall hear applications and receive public comment for Zoning Atlas amendments and/or text amendments to this Ordinance in a Quarterly Public Hearing.
- (B) ~~The public hearing is legislative in nature and the hearing shall normally be closed at the conclusion of the hearing. Closure of a legislative hearing does not bar discussion of an application outside of the public hearing setting.~~
- (C) ~~A quorum of Planning Board members shall not be necessary to conduct the public hearing.~~

### 2.8.7 Notice of Public Hearings

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- (A) Notice of the public hearing to review the application and receive public comment shall be published at least twice in a newspaper of general circulation in the county, stating the time and place of the hearing and the substance of the proposed amendment.
- (B) Said notice shall appear in said newspaper for two successive weeks with the first notice appearing not less than ten days nor more than 25 days before the date set for the public hearing. In computing the notice period, the day of publication is not to be included, but the day of the hearing is to be included.
- (C) In the case of amendments to the zoning atlas, the Planning Director shall post on the affected property a notice of the public hearing at least ten days prior to the date of said hearing.
- (D) In the case of amendments to the Zoning Atlas, written notice shall be sent by certified mail to the affected property owner and all adjacent property owners at least 15 days, but not more than 25 days, before the public hearing date. Adjacent property owners are those whose names and addresses are currently listed in the Orange County tax records and whose property lies within 500 feet of the affected property.
- (E) If amendments to the Zoning Atlas are proposed by the County, notice shall be sent by first class mail to all affected property owners and to all adjacent property owners within 500 feet as provided in (D) above.
- (F) The Planning Director shall certify the mailing of all notices to the Board of County Commissioners.

<sup>13</sup> Since a quorum of Planning Board members will no longer be necessary to hold a public hearing, the public hearing would no longer be a joint hearing.

### 2.8.8 Planning Board Review

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- (A) Following the public hearing, all proposed amendments shall be referred to the Planning Board for consideration and recommendation.
- (B) The Board of County Commissioners may direct the Planning Board to provide a recommendation by a date certain. If the Board of County Commissioners does not so direct, the Planning Board shall make its recommendation within ~~three regularly scheduled Planning Board meetings~~ 60 calendar days<sup>14</sup>.
- (C) If the Planning Board fails to make a recommendation within the time allotted in subsection (B) above, the application shall be forwarded to the Board of County Commissioners without a Planning Board recommendation.
- ~~(D) Amendments initiated by Orange County shall not be subject to time limitations other than those specified by the Board of County Commissioners during the public hearing process.<sup>15</sup>~~
- ~~(E) Evidence not presented at the public hearing may be submitted in writing to the Planning Board for consideration prior to the Planning Board's recommendation to the Board of County Commissioners. The Planning Board may consider additional oral evidence only if it is for the purpose of presenting information also submitted in writing.<sup>16</sup>~~
- (F) Interested persons may address the Planning Board at the Planning Board's meeting and public comments may be taken into consideration by the Planning Board in making its recommendation.
- (G) The Planning Board's action on an application shall be one of the following:
  - (1) Make no recommendation,
  - (2) Recommend approval,
  - (3) Recommend denial, or
  - (4) Recommend approval but with specified changes.

### 2.8.9 Action by Board of County Commissioners

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- (A) The Board of County Commissioners shall not consider enactment of ~~the~~ a proposed amendment until the Planning Board either makes its recommendation or takes no action on the application as prescribed in Section 2.8.8~~(C)~~.
- ~~(B) In making its decision, the Board of Commissioners shall consider all relevant evidence presented at the public hearing and any submitted written evidence that was considered by the Planning Board in making its recommendation.~~
- (C) In making its decision, the Board of Commissioners shall consider comments made at the public hearing, the Planning Board's recommendation, and the Planning Director's recommendation.

<sup>14</sup> Staff is suggesting a shorter potential review period. In recent years, the BOCC has instructed the Planning Board to return its recommendation by a date/time certain due to the case law requirement that public hearings be adjourned to a date/time certain. Since the public hearing is now proposed to be closed the night of the hearing and the requirement for only written comments after the public hearing is proposed for removal, the Planning Board will need to know that recommendations must be made within 60 days.

<sup>15</sup> Staff is suggesting that amendments initiated by the County have the same review time as applications submitted by others.

<sup>16</sup> Staff is suggesting that oral comments on legislative items could be made at the Planning Board meeting and they would not also have to be submitted in writing. This will help alleviate the current awkward process of leaving the public hearing open in order to receive written comments which necessitates items being placed on the BOCC under the "public hearing" heading but with the note that no additional comments are accepted.

- (D) The Board of County Commissioners is not bound by comments and recommendations and may make a decision different from comments and/or recommendations it receives.

#### **2.8.10 Text Revisions Pertaining to Soil Erosion and Sedimentation Control Provisions**

- (A) The Erosion Control Officer shall review all of the North Carolina Sedimentation Control Commission's revisions to the State's Model Soil Erosions and Sedimentation Control Ordinance and, within 90 days of receipt of the recommended revisions, submit draft amendments to the North Carolina Sedimentation Control Commission for its consideration and comments.
- (B) Within 150 days after receipt of the North Carolina Sedimentation Control Commission's comments, Orange County shall formally consider proposed amendments and, to the extent deemed necessary by the Board of County Commissioners, incorporate the amendments into this Ordinance.
- (C) Text amendments to this Ordinance for soil erosion and sedimentation control provisions shall comply with the requirements in effect for any other text amendment.

#### **2.8.11 Text Revisions Pertaining to Stormwater Provisions**

- (A) The Erosion Control Officer shall review all of the State Environmental Management Commission's revisions to the State's Model Stormwater Ordinance and, within 90 days of receipt of the recommended revisions, submit draft amendments to the State Environmental Management Commission for its consideration and comments.
- (B) Within 150 days after receipt of the State Environmental Management Commission's comments, Orange County shall formally consider proposed amendments and, to the extent deemed necessary by the Board of County Commissioners, incorporate the amendments into this Ordinance.
- (C) Text amendments to this Ordinance for stormwater provisions shall comply with the requirements in effect for any other text amendment.

### **SECTION 2.9: CONDITIONAL DISTRICTS**

#### **2.9.1 Conditional Use District (CUD)**

- (A) **Generally**
- (1) Any use permitted under the CUD process shall conform to all applicable development regulations for the corresponding general use zoning district as well as any specific development standards outlined within this Ordinance.
  - (2) The Board of County Commissioners, in reviewing a CUD application, may impose such reasonable conditions upon approval of a CUD request as will afford protection of the public health, safety, and general welfare, ensure that substantial justice is done, and ensure equitable treatment.
  - (3) Only those conditions mutually agreed to by the applicant and the Board of County Commissioners may be imposed on a CUD application.
  - (4) Within the Economic Development Districts (EDDs), there are specific uses that require approval of a CUD. These uses are noted on the Table of Permitted Uses – Economic Development Districts (Section 5.2).
- (B) **Applications**
- Applications to establish a CUD shall be submitted to the Planning Director and shall be processed in accordance with the procedure(s) for:
- (1) Zoning Atlas amendment (Section 2.8),
  - (2) Class A Special Use Permit (Section 2.7), and

### **2.11.3 Stay on Further Proceedings**

- (A) An appeal to the Board of Adjustment from a decision or determination of the Planning Director stays all proceedings in furtherance of the decision or determination appealed from, except as provided herein.
- (B) An appeal to the Board of Adjustment of a determination or decision of the Planning Director shall not stay further proceedings in furtherance of the decision or determination appealed from, if the Planning Director certifies to the Board of Adjustment in an affidavit either:
  - (1) A stay would cause imminent peril to life or property, or
  - (2) The situation appealed from is transitory in nature and, therefore an appeal would seriously interfere with enforcement of the Ordinance.
- (C) In either instance, the Planning Director shall place in the determination facts to support the conclusion if (B)(1) and/or (B)(2) are invoked.
- (D) If (B)(1) and/or (B)(2) are invoked, and approved by the Board of Adjustment, enforcement proceedings shall not be stayed except through the issuance of a restraining order issued by a court of competent jurisdiction. If enforcement proceedings are not stayed, the appellant may file a request for an expedited hearing of the appeal.

### **2.11.4 Review Procedures**

- (A) Applications for an appeal of an interpretation shall be reviewed and acted upon by the Board of Adjustment in accordance with the procedures contained in Section 2.12 of this Ordinance.
- (B) The conduct of the hearing shall be consistent with the provisions of Section 2.12 of this Ordinance.
- (C) The Planning Director shall complete an assessment of the application and provide a recommendation on the disposition of the application. The assessment shall include all relevant facts utilized in rendering the disputed decision and the rationale for the interpretation made by the Planning Director.
- (D) The assessment shall be introduced at the hearing and become part of the record.
- (E) Upon hearing all evidence associated with the application, the Board of Adjustment shall close the hearing and render a decision on the matter to affirm, modify, or reverse the decision of the Planning Director.

### **2.11.5 Findings of Fact**

The Board of Adjustment shall provide a detailed rationale for its decision in the form of an order to affirm, modify, or reverse the decision of the Planning Director. This order shall provide the necessary justification for the Board's action based on the testimony and evidence entered into the record during the hearing.

### **2.11.6 Notice Requirements**

Notice requirements shall follow Section 2.12.6(A). Other subsections of Section ~~2.2.6~~ 2.12.6<sup>17</sup> are not applicable to applications for an appeal of an interpretation.

## **SECTION 2.12: BOARD OF ADJUSTMENT**

### **2.12.1 General Provisions**

- (A) The Board shall act on all applications before it.

<sup>17</sup> Typographical error that staff recommends correcting as part of this amendment package.

- (4) Historic properties,
  - (5) Scenic corridors,
  - (6) Known bird migratory patterns through the County,
  - (7) Voluntary Agricultural Districts, and
  - (8) Publicly-owned or quasi-public lands.
- (C) In order to participate in the Plan, all owner(s), or their legally binding representatives, shall submit an application on a form prepared by the Planning Department requesting inclusion.
- (D) All telecommunication providers who elect to construct facilities on properties in the Plan shall provide all necessary and requested information to the County's telecommunications consultant.
- (E) Modification of the Plan may be considered annually at the **February first** Quarterly Public Hearing **of the calendar year, normally held in February**. Any applicant requesting modification of the Plan shall make application to the Planning Director on or before December 1st of each year. The fee for modifying the Plan shall be that as set forth in the Orange County Schedule of Fees.
- (F) Withdrawal from the Plan is permitted if any owner submits, to the Planning Director, a notarized statement requesting same. Upon receipt of the request, including any fee for modifying the Plan as set forth in the Orange County Schedule of Fees, the Planning Director shall inform interested parties that the property has been withdrawn from consideration. Removal of the property from the Plan shall be processed as a modification as detailed herein.

#### **5.10.3 Annual Telecommunications Projection Meeting (ATPM)**

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**(A) Purpose and Outcome**

- (1) The purpose of the ATPM meeting is to allow for a complete review of collocation opportunities, address coverage issues, and discuss the location of needed telecommunication support structures with providers who intent on submitting development applications for action by the County. The intended outcome of the meeting is to allow the County and interested parties to develop a plan for facility deployment within the County that provides reasonable coverage based on the needs of the County and its residents, while minimizing the total number of needed telecommunication support facilities, including minimizing the intrusiveness of such facilities, and encouraging the development of a more efficient telecommunication network.
- (2) The intended outcome of the meeting is an understanding amongst the Planning Director and providers on areas of the County where telecommunication support facilities are needed and application request for the year should be focused.

**(B) Applicability**

- (1) By December 31<sup>st</sup> of each calendar year, telecommunication providers shall submit to the Planning Director a plan indicating proposed search rings for anticipated telecommunication support structures. This plan shall identify areas where providers are looking to locate facilities, as well as identify those areas of the County that are underserved by existing facilities.
- (2) As of the effective date of this Ordinance amendment any pending applications that have not received a zoning compliance permit or a special use permit shall meet all requirements of this Ordinance, including, but not limited to submission deadlines, application standards and processing, excluding the ATPM requirement.

**(C) Meeting Specifics**

## PLANNING BOARD POLICIES AND PROCEDURES

### SECTION I: SCOPE

#### A. Purpose

1. To establish a policy and procedures whereby the Orange County Board of Commissioners will establish the specific policies and procedures governing the Planning Board.
2. The Orange County Board of Commissioners may appoint an advisory board whose duty is to serve in an advisory capacity to Orange County Board of Commissioners.

#### B. Authority

1. North Carolina General Statute 153A-76 grants boards of county commissioners the authority to establish advisory boards.
2. The Orange County Advisory Board Policy serves as the underlying policy document to which the Planning Board, in addition to this policy and procedure document, is subject. The Orange County Advisory Board Policy is attached hereto as "Exhibit A".
3. In the event that there is a conflict between the Orange County Advisory Board Policy and this Policies and Procedures document this Policies and Procedures document shall control.

#### C. Charge

1. The charge of the Planning Board is contained in Section 1.6.3 of the Orange County Unified Development Ordinance.

The purpose for which the Planning Board was formed: to serve in an advisory capacity to the Orange County Board of Commissioners in regards to planning, zoning, and subdivision matters, as provided in Section 1.6.3 of the Orange County Unified Development Ordinance.

### SECTION II: GOALS AND OBJECTIVES

#### A. Goals

1. The Planning Board shall carry out the duties contained in Section 1.6.3 of the Orange County Unified Development Ordinance to the best of its ability.

#### B. Objectives

1. Acting under the directives of the Board of County Commissioners and with County staff, the Planning Board shall pursue the duties contained in Section 1.6.3 of the Orange County Unified Development Ordinance.

### SECTION III: MEMBERSHIP

A. Authority

1. North Carolina General Statute 153A-76 grants boards of county commissioners the authority to establish advisory boards and to appoint members to and remove members from those advisory boards. In acting on this authority the Orange County Board of Commissioners hereby establishes certain general conditions to which applicants and members of advisory boards should conform.

B. Composition

1. Planning Board composition is detailed in Section 1.6.1 of the Orange County Unified Development Ordinance. Additional membership requirements are listed in said Section of the UDO.
2. The Planning Board does not have alternate members.

C. Chair, Vice Chair, and Secretary

1. The Planning Board shall elect by majority vote a Chair and Vice Chair from among its members at the regular meeting in January of each year.
2. Chair and Vice Chair terms of office shall correspond to the requirements of the Orange County Advisory Board Policy.
3. The Secretary of the Planning Board shall be the Planning Director or his/her designee.
4. The Chair and Secretary shall ensure that each Planning Board member is presented with a copy of the Planning Board's charge, scope of authority, membership responsibilities, and code of conduct when the Planning Board member is appointed to the Planning Board.
5. The Planning Board Chair, or Vice Chair in the Chair's absence, shall attend quarterly public hearings and Board of County Commissioners meetings at which a decision is scheduled for items on which the Planning Board has made a recommendation.<sup>1</sup>

## SECTION IV.MEETINGS

A. Staffing

1. The Planning Director shall perform the duties set forth in Section 1.6.4 of the Orange County Unified Development Ordinance.

B. Agendas

1. Items for agendas shall be approved by the Planning Board Chair and staff.

<sup>1</sup> The new requirement was suggested at the May 12, 2015 BOCC work session when the BOCC discussed the public hearing process.

2. The designated staff will develop and distribute to each member an agenda listing the matters to be considered at upcoming advisory board meetings. The regular meeting agenda and materials shall be distributed at least seven (7) calendar days before the regular meeting

C. Date, Time, and Location of Regular Meetings

1. Regular Meetings of the Planning Board shall be held on the first Wednesday of each month. The start time and location of the meeting shall be included on the agenda and shall typically be 7:00 p.m. at the Orange County West Campus Office Building located at 131 West Margaret Lane, Hillsborough. The Planning Board Chair, in consultation with staff, shall have the authority to change the start time and location of a regular meeting to meet any special circumstances, provided the information is included on the distributed agenda.

D. Notice of Meetings

1. Notice of regular Planning Board meetings and agendas shall be made available to all members and interested parties, and to any person who requests such notice, at least seven (7) days in advance of the meeting by e-mail and by posting on the Orange County government website.
2. Notice of public hearings shall conform to the notice requirements of Section 2.3.6 and/or 2.8.7, as applicable, of the Orange County Unified Development Ordinance.
3. Agenda materials for public hearings shall be distributed to Planning Board members and posted on the Orange County government website for interested parties a minimum of ten (10) calendar days prior to the public hearing.

## SECTION V. ORIENTATION

A. Attendance

1. Each member shall attend an orientation presented by the Orange County Staff to familiarize the advisory board members with the operation of County government, the Planning Department rules, and the operating procedures of the advisory board.
2. Each voting member will be encouraged to complete the orientation within six weeks of his or her appointment and participate in at least one meeting with the staff.

## SECTION VI. BY-LAWS

A. By-Laws

1. Any Bylaws adopted by the Planning Board are void and no further

bylaws shall be adopted. Procedure shall be governed solely by this policy document and the General Advisory Board Policy Document.

2. Should the Planning Board determine modifications to policies and procedures are necessary the Planning Board may petition the Board of County Commissioners for such modifications.